



The Idea of Self-Determination: Hierarchy and Order after Empire

Maja Spanu

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obtaining the degree of Doctor of Political and Social Sciences
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Abstract

International Relations scholarship suggests that meanings embedded in the idea of self-determination have shifted over time. This scholarship also recognises that throughout the twentieth century self-determination has played a key role in the demise of empire and the ensuing formation of new states. This was the case with the conclusion of World War I, with the wave of post-World War II decolonisation, and following the break-up of the Soviet Union and Yugoslavia. However, whereas scholarship depicts self-determination as central to the legitimacy of new states and international society, it does not tell us much about what happens *after* statehood is recognised. The assumption that self-determination ends where sovereignty starts, the author argues, obscures the ambiguous role that self-determination has played before, and crucially *after* statehood is recognised. Invoked to universalise the model of the nation-state and sovereign equality, self-determination has concurrently involved exclusions and hierarchies, both domestically and systemically. The present thesis is concerned with this fundamental and yet largely neglected part of the story of the expansion of international society. More precisely, the author argues that twentieth century understandings and usages of the idea of self-determination point to the existence of a recurrent tension. This is a tension between the egalitarian aspirations of self-determination on one hand, and practices of hierarchy associated with self-determination on the other. For each of the 20th century waves of expansion of international society, this tension has been evident at three different levels of world politics. First, it has been embodied in the disciplinary role of international society, when self-determination was redefined, during each wave of state formation, as the standard of legitimate membership and statehood. Second, the tension has manifested itself at the domestic level of the newly “self-determined” states as boundaries of national political communities were delineated. Third, and as an implication of all this, the tension is found in the ordering of states within international society.

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Before turning to the thesis, I would like to conclude these acknowledgements with a short anecdote. I was only a child when I first went to the EUI. Every morning, my parents would take me to the *crèche* of *Villa Schifanoia*, before my mother went to work at the *Badia*. The memories of my childhood in the gardens of the Institute have accompanied me throughout my whole life. I would thus like to thank my parents and, in particular my mother, as, in some sense, she was the first to inspire me to start my doctorate at the EUI.

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Introduction

When in June 1991 Franjo Tudjman came to proclaim the creation of the Croatian state, he did so in the name of what he regarded as the “inalienable, indivisible, non-transferable and perpetual right of the Croatian nation to self-determination and state sovereignty.”¹ That same phrase, uttered to define the contours of the new, independent state of Croatia, was, however, simultaneously used to justify the moral, legal and physical exclusion of individuals that did not fall within the boundaries of the Croatian nation, now marked, infamously, by ethnic criteria. Just one year earlier, in Paris, member states of the Conference on Security and Cooperation in Europe, of which Yugoslavia was also part, had each formally agreed upon a “steadfast commitment to democracy based on human rights and fundamental freedoms,” undertaking “to build, consolidate and strengthen democracy as the only system of government for [our] nations.”² Could self-determination be invoked, and its invocation be tolerated internationally, to justify boundaries of inclusion and exclusion along ethnic lines?

As the European Community (EC) Commission on the dissolution of Yugoslavia reiterated in January 1992, when violence and exclusion had by then spread throughout the whole of the Balkans, “Article 1 of the two 1966 International Covenants on human rights established that the principle of the right to self-determination serves to safeguard human rights.”³ And yet, the opposite was occurring, right after the endorsement of the Paris Charter, and at the heart of Europe, in the very region where, in 1919, the Paris peacemakers had applied self-determination to guarantee the transition from empires to nation-states. Robust international condemnations followed, leading eventually, after years of violence and upheaval, to the establishment of international supervisory regimes, such as in Bosnia and Kosovo.

Tensions between international ideas and expectations attached to self-determination, on the one side, and domestic ideas and practices of self-determination, on the other, are not a new matter. If we examine the history of the twentieth century, similar dynamics emerge. With the conclusion of World War I, new states were formed in the name of self-determination on territories formerly under the rule of the Austro-Hungarian, German, Ottoman and Russian empires. Recognition of new states as equal members of the “family of nations” was made

¹ *Constitution of the Republic of Croatia*, Part I: Historical Foundations, adopted on December, 22nd, 1990.

² Charter of Paris for a New Europe, unanimously endorsed in Paris in 1990 by the members of the CSCE.

³ Quoted and discussed in Pellet, “The Opinions of the Badinter Arbitration Committee.”

conditional upon the ratification of the so-called Minority Treaties. These treaties delineated internationally, despite obvious flaws, the contours of self-determination after the war, and how national authorities should define and treat internal societies. The way in which the new states were formed, though, did not conform to international standards.

International Relations (IR) scholarship recognises that throughout the twentieth century the principle of self-determination has played a key role in the demise of imperial orders and the ensuing formation of new states. This was the case with the conclusion of World War I, with the wave of post-World War II decolonisation, and following the break-up of the Soviet Union and Yugoslavia. However, whereas it depicts self-determination as central to the legitimacy of new states and international society, this scholarship does not tell us much about what happens *after* statehood is recognised. This thesis argues that the assumption that self-determination ends where sovereignty starts underestimates the ambivalent role of self-determination before and, crucially, after statehood is recognised. Not only does this assumption restrict the story of the expansion of international society to the establishment of new states, overlooking subsequent implications for international membership and order, it neglects fundamental aspects, often dismissed from the study of IR as “merely” belonging to the domestic realm. This thesis is concerned with this fundamental and yet largely neglected part of the story of the expansion of international society.

We are told that over the past century, the progressive unfolding of self-determination led to the expansion of the model of the nation-state, replacing vertical logics of membership and identity with horizontal ones. New states were formed, they became members of international society, and this is where the story of its expansion ends. In this thesis, however, I show that this progressivist tale of equality sits uncomfortably with logics of hierarchy that accompanied the history of self-determination throughout the twentieth century, internationally but also domestically. The thesis thus addresses the following research question:

What is the relationship between evolving conceptions of self-determination internationally and domestic practices of self-determination in the wake of empire, and what does this relationship tell us about the constitution of hierarchy in 20th century international society?

The existing literature

As Chapter 1 will show, the nature of imperial systems has been traced in IR since Michael Doyle's foundational work *Empires*, and more recently scholars have focused on processes of imperial demise. Authors engaged with ends of empires have stressed how invocations of self-determination have been used to delegitimise these forms of political authority, focusing in particular on the period between the end of World War I and the post-World War II wave of decolonisation.⁴ This process, it has been recently stressed, was importantly the result of subject peoples' demands for greater equality of rights, which, due to their nature, empires could not accommodate.⁵ Self-determination thus came to be firmly associated with such demands over the 1950s and 1960s, through its framing in the language of human rights.⁶ Used to justify the dismantling of imperial systems and their unequal regimes of rights' allocation, self-determination became attached to ideas of equal rights and non-discrimination, and in turn, came to delineate the model of the nation-state globally.⁷

These are aspects crucial to the story of the expansion of the modern sovereign order during the twentieth century, yet they represent just one portion of it. The question as to what happened both domestically and internationally during moments of expansion, once self-determination was proclaimed remains unanswered. Compared to the first part of the historical account, little attention has been given in IR to the relationship between self-determination and state formation after imperial demise. These observations lead to the suggestion that within the discipline the model of the nation-state, along with its defining values of equality and, increasingly, inclusion, has "come to be construed as the inevitable endpoint of self-determination."⁸ Engaging with only one side of the story bears at least one major, teleological risk. It leaves the reader with the sense that indeed the nation-state was achieved globally, against political hierarchies and discrimination. James Mayall, one of the "fathers" of the study of self-determination in IR, wrote in 1990 that over the twentieth

⁴ Manela, *The Wilsonian Moment*, 2007; Simpson, "Brad Simpson, 'The Many Meanings of National Self-Determination,' *Current History*, 113."

⁵ Reus-Smit, *Individual Rights and the Making of the International System*, 2013.

⁶ The argument has been firstly acknowledged in Reus-Smit, "Human Rights and the Social Construction of Sovereignty," 2001. It has then been the object of a book in International History: Burke, *Decolonization and the Evolution of International Human Rights*, 2010.

⁷ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, Chapter 5.

⁸ Scott, "The Image of the State and the Expansion of the International System," 27.

century “the naturalness of hierarchy was replaced by the naturalness of equality.”⁹ This thesis calls into question this widely shared assumption. In scholarly practice in particular, we tend to work with restrictive analogies between hierarchy and empire, on the one hand, and equality and nation-state, on the other. However, the historical picture of the expansion of international society in the twentieth century is less clear-cut. This thesis thus seeks to problematise - to borrow Mayall’s expression - the “naturalness” with which transitions from empires to nation-states have been portrayed, and locate them within the broader realm of twentieth century world politics.

Within the existing IR literature, the bodies of scholarship that have engaged most directly with the questions posed in this research are the English School and constructivism. Crucially, both bodies of scholarship acknowledge that self-determination lies, today, at the heart of states’ legitimacy, international society and world order. However, both schools are problematic in key respects. First, with one exception (James Mayall’s 1990 work) neither body of work has fully problematised self-determination. Instead, self-determination has been regularly studied in association with, and subordination to, other core principles of international order such as sovereignty, human rights and non-interference.¹⁰ Second, whereas both literatures recognise that self-determination has been constitutive of new states, neither has engaged with the implications of the relationship between self-determination and (legitimate) statehood after empire. The implications of this relationship upon reconfigurations of order and upon questions of international legitimacy remain largely overlooked.¹¹

What is present in the extant literature, instead, is a general appreciation that, beyond its centrality, the meaning associated with self-determination has changed over the twentieth century. For a long time, emphasis was put on the inter-war period.¹² More recently, IR scholars have directed their attention to the post-World War II wave of decolonisation, joining a similar growing interest in the discipline of history. Tracing changes in meaning is insufficient, however, for a comprehensive understanding of the place of self-determination in

⁹ Mayall, *Nationalism and International Society*, 1990, 33.

¹⁰ Respectively, see as cases in point: Glanville, *Sovereignty and the Responsibility to Protect*, 2014; Reus-Smit, *Individual Rights and the Making of the International System*, 2013; Respectively, see as cases in point: Welsh, *Humanitarian Intervention and International Relations*.

¹¹ As an exception see Hurrell, *On Global Order*, 2007, Chapter 5.

¹² As a case in point see Jackson Preece, *National Minorities and the European Nation-States System*.

world politics. Conceptions of self-determination have both normative and historical implications for statehood. These, I argue, are implications that should be investigated, as they relate both to the internal organisation of states and their acceptance as legitimate members of international society. This thesis seeks to correct this tendency by building upon the constructivist and English School literatures, the recent resurgence of interest in self-determination in international history, and, to a lesser extent, relevant writings in legal history.

The argument

Pursuing this line of analysis in Chapter 2, I argue that despite their variations twentieth century understandings and usages of the idea of self-determination point to a recurrent tension. This is a tension between the egalitarian aspirations of self-determination, on one hand, and the practices of hierarchy associated with self-determination, on the other. As we shall see, for each of the 20th century waves of expansion of international society,¹³ this tension is evident at three different levels of world politics.

First, the tension has been embodied in international redefinitions of self-determination. Throughout the 20th century, IR scholarship tells us, self-determination became the accepted standard for post-imperial statehood and membership in international society. Yet just like any standard, I argue that self-determination has inevitably entailed correlative disciplining expectations. These have been international expectations as to what “good” domestic order ought to be within post-imperial states. These expectations have been marked by a discourse about political equality of individuals and equality of rights as constitutive of the nation-state. However, they have also been at times more, or less, explicit and coherent, encouraging, in contradictory ways, the recognition of certain claims over others. Moreover, whereas self-determination is largely imagined as the principle associated to non-interference and leading to sovereign equality after breakdowns of imperial orders, by the very delineation of international expectations, the dominant narrative about equality within and among states appears to be compromised.

¹³ The phrase “waves of expansion of international society” was first used by Reus-Smit, in “Struggles for Individual Rights and the Expansion of the International System,” 207.

Second, the tension has manifested itself at the domestic level of the newly “self-determined” states as political élites delineated the boundaries of national political communities. It has long been acknowledged that there needs to be a demarcation as to who can be part of a political community and who cannot. The unexpected feature of exclusions in new, post-imperial states formed in the name of self-determination lay in the systematic way in which these took place. ‘Hierarchical membership’ has been the norm, I shall argue. Old social distinctions, or hierarchies inherited from past imperial modes of recognition, have structured post-imperial societies, often at odds with the egalitarian aspirations of self-determination.

The deeper significance of all this, that constitutes the third level of my argument, is that international expectations about equality within new, “self-determined” states have rarely (if ever) been met. This discrepancy, I suggest, has resulted in the moral and political categorising of states along lines of democratic/liberal zones of practice and identity. In a way not dissimilar to old civilisational ideas, self-determination has been used to justify hierarchies of status, *within* international society. Self-determination has not only established who could be part of international society and who could not. Expectations attached to self-determination (and whether these were respected or not) have also delineated, at given times, who could be a more legitimate – and thus equal - member within it.

Historical cases

The empirical body of the thesis is organised into three main parts, composed of two chapters each, and each concerned with a different wave of state formation after hierarchical systems of authority collapsed: following World War I (chapters 3 and 4), with the decolonisation movements after World War II (chapters 5 and 6) and with the end of the Cold War (chapters 7 and 8). Each part has a similar structure: the first chapters in each pair are concerned with international redefinitions of self-determination, the second chapters all deal with the role of self-determination, both domestically and internationally, after statehood is recognised.

Part One

The historical investigation commences with the end of World War I and the Paris Peace Conference, when self-determination became a shared principle of international order.

Chapter 3 explains that self-determination was granted to those people who had mobilised nationalist sentiment during the nineteenth century, under the Austro-Hungarian and Ottoman empires. It was also explicitly tied, I argue, to international expectations about what “good” domestic order should be, after statehood was recognised. Representatives of Great Powers at the Paris Peace Conference principally defined these expectations. Recognition of new states as equal members of the “family of nations” was thus made conditional upon the ratification of the so-called Minority Treaties. With their inconsistencies, these treaties each delineated internationally how national authorities should define and treat internal societies and groups.

However, as Chapter 4 shows, the way domestic societies came to be delineated and treated within many newly formed states did not follow international expectations. Post-imperial hierarchical membership was in contrast with the international conceptions of equality that, despite obvious flaws that I will highlight, were embedded in the idea of self-determination upheld in Paris. To illustrate my claims, I direct my attention to the formation of the Kingdom of Yugoslavia. I contend that the Kingdom was inaugurated in 1919 on explicitly contradictory grounds and later exemplified a form of hierarchical membership. Throughout the 1920s the League of Nations would constantly remind Yugoslavia and other post-imperial states that their status as sovereign equals was dependent upon meeting international expectations about appropriate state behaviour defined in the treaties.

Part Two

Chapter 5 locates the idea of self-determination in the realm of the wider transformations that characterised the international normative environment in the post-World War II decolonisation period, until the passing of the two International Covenants on Human Rights in 1966. In the immediate post-war years important changes were in motion but the United Nations remained an empire-oriented organisation.¹⁴ The principle of self-determination was stated in the UN Charter in 1945, but was more an aspirational principle than as an immediately and universally applicable right. Major transformations took place in the following years, when post-colonial delegates used the UN as an arena to uphold the cause of self-determination for all against the will of colonial powers. Thanks to their efforts, self-

¹⁴ Mazower, *No Enchanted Palace*.

determination came to be embedded in human rights language and a nexus was established between human rights and political rights within bounded polities.

General Assembly Resolution 1514 on the Granting of Independence to Colonial People, passed in 1960, constituted a watershed, licensing, in the name of self-determination and human rights, the constitution of new states in those areas still under colonial rule. As Chapter 6 shows for post-colonial Africa, despite the ideals of equality and inclusion upon which new states were proclaimed, conceptions of hierarchical membership often prevailed internally. States formerly under British and French authority are of particular interest to this chapter. First, they represent an important axis of variation as to the type of membership policies inherited from colonialism, British authorities stressing diversity, French ones, instead, propounding assimilation. According to the type of membership regime inherited, more or less formalised practices of hierarchical membership were inaugurated after independence. With decolonisation, international supervisory regimes retreated, due to norms of sovereign equality and non-interference. While in many post-colonial states, in particular those formerly under British rule, hierarchical membership endured in line with older imperial membership policies, the standard formula at the UN was a “liberal pluralist” one.

Part Three

Chapters 7 and 8 are both concerned with the break-up of Yugoslavia and the formation of its successor states. Chapter 7 investigates the re-emergence in international debates of ethnicity and self-determination, right in the area where the Paris Peacemakers had thought the matter to be solved. The temptation to constitute ethnically defined nation-states was perceived as deviant from the liberal ideals to which self-determination had come to be attached as a norm after 1960. The promptness with which the European Conference on Yugoslavia (and EC Committee) was organised in September 1991, indicates international society’s willingness to delineate, again, the boundaries of self-determination and criteria of entry into international society. However, as in 1919 this was undertaken on contradictory grounds. Whereas equality and human rights were promoted, the EC Committee and Conference on Yugoslavia recognised only certain groups and thus, only some claims over others.

Taking stock of these events, Chapter 8 considers three distinct attempts to delineate political communities in the name of self-determination. Starting in 1991 with Croatia’s secessionist

declaration, it continues with the Bosnian events of 1995, and terminates in 2008, with Kosovo's unilateral proclamation of independence. The chapter also examines how and why international responses to self-determination claims and state formation have changed. Starting from the initial disinterest in Croatia's strongly institutionalised practices of hierarchical membership, questioned only later and the object of a delayed EU accession process, it then turns to the turbulent international involvements (with a focus on the UN and OSCE) in Bosnia and Kosovo.

Approach and Method

Interestingly, during two of the three key moments studied in this thesis, the Balkan area was one of, if not the principal object of international discussion. These moments were after 1919, and the end of the Cold War, the first when self-determination was acquired for the Kingdom of Yugoslavia, the second when it was acquired for the Successor States to Former Yugoslavia (SSFY). In both cases practices of hierarchical membership were inaugurated. It appears that hierarchies were also fostered through international supervisory regimes. "More mature" states were called to guarantee self-determination after World War I, with the Minority Treaties, and then in the 1990s and 2000s, in particular through the role of the OSCE and EU. I will also show that concurrently, these international supervisory regimes fostered a certain ambiguity, both domestically and internationally. Domestically, they cultivated hierarchies of rights, both in 1919 and after the Cold War. Internationally, they made sovereign equality (and in the case of Kosovo, sovereignty) conditional upon respect for the expectations attached by international actors to self-determination.

In both cases, clearly defined groups of actors delineated such expectations and understandings of self-determination. In the case of the Paris Peace Conference, the Minority Treaties were negotiated by a very limited number of actors. Delegates representing national groups in post-imperial territories were invited to speak, to give their view on the creation of new states. Teams of geographers, anthropologists and historians worked on the matter. However, it was within the limited space of the Committee on New States, formed on the decision of the Council of Four composed of Georges Clémenceau, David Lloyd George, Vittorio Emanuele Orlando and Woodrow Wilson, that the content of the treaties was discussed. Many contested at the time the views that the representatives of these Great Powers upheld. In the years preceding the Paris Peace Conference, the Bolsheviks had articulated the

idea of self-determination as the vehicle for social revolution – a view that was to influence decisively and globally later struggles for self-determination. In Paris, post-imperial states, including Japan’s representatives, called into question the institutional boundaries of self-determination, demanding the recognition of the equality of nations and races in international law. Throughout the 1920s and 1930s, self-determination as defined at the Peace Conference was to be contested by numerous members of the League of Nations, from Latvia’s and Finland’s proposition to universalise minority protection in 1922, to later Ethiopian claims for self-determination against Italy. These challenges attest to the fact that, although the Great Powers sought to define self-determination in order to regulate the entry of new members into international society, such institutional understanding was constantly contested.

Similarly, in the post-Cold War period, despite the formal shift towards structural equality internationally, a group of mostly western actors (with the exception of the Organisation of the Islamic Conference) became actively involved in monitoring the dissolution of Yugoslavia. The European Community (EC), the Conference for Security and Cooperation in Europe (CSCE, future OSCE), the UN, the USA, and various individual European states, in particular Belgium, France, Germany, Italy, Luxembourg and the UK, identified with and acted in the name of what they termed the “international community.” Although the term is highly contested in academia, it does appear in UN texts and resolutions and, taken as such, represents the self-perception of certain actors, a perception defined by shared beliefs and values, following an undoubtedly blinkered liberal vision. Unlike works that, even though critically, like Dominik Zaum’s,¹⁵ endorse the term when discussing international involvement in the area, I prefer not to, and refer instead specifically to individual actors: from the EC’s prompt involvement by its organisation of a peace conference, to other western states’ contradictory reactions; from the successive peace conferences in which the US played a key role, such as Dayton and Rambouillet, to the role of the UN and OSCE missions *in loco*. This should allow me to stress the absence of homogeneity in international response, while these very same actors have redefined self-determination in the name of so-called universal values. International response to the dissolution of Yugoslavia and to the further formation of new states, though, was very much contested. First, local actors contested it - Belgrade on the one hand argued (and acted) against the dissolution of Yugoslavia, Pristina, on the other, in the face of initial international disinterest, called for Kosovo’s self-determination. Moreover,

¹⁵ Zaum, *The Sovereignty Paradox*, 2007, 9.

international public opinion criticised the contradictory involvement of the EC, then US, UN and OSCE in the area. An analysis of their role should thus help reflect upon logics of power structurally, but also how ideas settle and come to constitute a certain form of power, too.¹⁶

Although very different, post-colonial African states in the 1960s represent interesting cases for this thesis. International disciplining continued in the form of expectations attached to the application of *uti possidetis*, and other UN resolutions on decolonisation. These had been negotiated by post-colonial states, and thus purported a global character, while supervisory regimes withdrew. In many post-colonial states, in particular those formerly under British rule, hierarchical membership endured in line with older imperial membership policies. Their perpetuation in post-colonial Africa led to international criticism, such as in Nigeria, following the international endorsement of self-determination as a prerequisite for human rights and the further institutionalisation of the human rights regime. However, due to norms of sovereign equality and non-interference, and perhaps also because this was occurring beyond the sphere of influence of the two ideological blocs and was therefore of less strategic concern, the stratification of status of these new states took ambiguous forms. For example, international disciplining towards newly independent states took the form of requirements from international financial institutions to adapt (and “develop”) towards a capitalist economy. A strong reaction came in the 1960s and 1970s from post-colonial Asian and African states, calling for economic self-sufficiency, through, for example, the inauguration of a New International Economic Order.

Hence, whereas the story that I tell in this thesis has a strong institutional focus, this does not signify that such understandings were not regularly contested or challenged. Numerous other actors and their claims have shaped and challenged the formation of domestic and international hierarchies. It is important to emphasise, then, the histories of resistance and radical critiques of these dominant redefinitions and formulations of self-determination. As I demonstrate at various points in the thesis, it may be, indeed, that such histories and critiques complement rather than contradict my overall argument. Nevertheless, it is one of the (necessary) limitations of this thesis that it does not engage in comprehensive detail with such acts of resistance and many important radical or contesting visions of self-determination.

¹⁶ I refer here to two out of the four categories of power (structural and productive) developed in Barnett and Duvall, “Power in International Politics.”, 43

In each case, I have directed my attention towards areas that were the main focus of international discussion on the application of self-determination (rather than those excluded from it). To make sense of 20th century world politics, most scholars interested in the principle have in fact directed their attention to justifications used to avoid the recognition of self-determination's claims. I propose to complete extant arguments by focusing on the implications as to legitimate statehood and membership for new states formed on the basis of the principle. I am not indifferent towards other extant claims and practices, but I hope that my focus might tell us something about the constant negotiation between equality and hierarchy *within* international society, in particular after self-determination is recognised and statehood acquired.

Thus, in this thesis, I undertake a macro-historical research, by looking at the emblematic moments in which self-determination was redefined, renegotiated and used as the standard of entry for groups of states into international society. I have used a broad, inclusive understanding of such historical moments, extending my historical research over several years (Part One) and decades (Part Two, Part Three). Each historical moment that I investigate in this thesis uncovers logics of both continuity and change. Each uncovers different understandings, contingent upon specific material and normative contexts, but also reveals logics of continuity, through the repetition of certain practices and the persistence of given conceptions over time.

To identify such discourses, practices and conceptions, both domestically and internationally I have relied on primary and secondary sources in French, English and Serbo-Croatian. For my analysis of the Paris Peace Conference and the League of Nations I have undertaken research at the archives of the League of Nations in Geneva (LNA). I have also undertaken archival research for my study of the post-1945 United Nations, both at the United Nations Office in Geneva (UNOG) and at the United Nations Archives in New York (UNA). For both historical cases, I have used available verbatim records from meetings within relevant bodies, correspondence among national delegates and the League's or UN representatives, relevant petitions, pamphlets, newspapers' articles, and official documents. For the post-Cold War period, I have used official statements, annual reports, recommendations and legal texts by the various international organisations and actors involved in the Balkans. Whereas I have spent time in the area, these documents were mostly available online. I have undertaken several

interviews with international stakeholders in Croatia, Bosnia and Kosovo, though these were rather complementary to the primary work of analysing texts and statements.

With regards to the various domestic contexts that I study, I have largely relied upon official statements and speeches, as well as on legal documents. Where possible, I have sought to combine my investigation with materials less often used in IR research, such as films and novels. I have also tried to maintain a certain balance in each chapter in the sources used, though this was not always possible, given that in certain cases, such as Bosnia and Kosovo, numerous documents are not yet available.

A final word before beginning

In fine, The concluding chapter of the thesis reflects on the implications of these arguments. This thesis undertakes a re-reading of the idea and practice of self-determination over the twentieth century expansion of international society. This re-reading rejects the conventional IR treatments, which tend to depict the expansion of international society, at the end of empire, as a linear and progressive globalisation of sovereignty and diffusion of liberal norms. Instead, this thesis presents a more complex history, in which the application of self-determination has been both a local and international matter involving a persistent negotiation between the claims and practices of hierarchy and equality. Accordingly, this thesis offers three contributions. First, it speaks to the growing literature concerned with the constitution of hierarchy in world order, by offering a holistic approach that sees the domestic and the international as two mutually constitutive spheres. Second, this thesis speaks to the burgeoning literature on the “standard of civilisation,” as it underscores the civilisational role that self-determination has played in shaping legitimate statehood and membership over the 20th century. Third, and as an implication growing from my research, this thesis makes a valuable contribution to the emerging constructivist agenda to recover meaning in the historical study of international relations.

Whatever Happened to Self-Determination?

International Relations (IR) scholars recognise that the idea of self-determination has been central to the legitimacy of new states and the expansion of international society. However, very little attention has been given to what happens *after* statehood is recognised. This lack of attention is problematic for it overlooks the tension at the centre of this thesis. This chapter demonstrates this gap and suggests how it will be filled by the thesis. As the first section will explain, because of reasons peculiar to the intellectual history of the discipline, for a long time self-determination did not attract much attention. Unlike legal theory and political theory, which, with their limits, have made regular interventions on the question, issues of self-determination have only attracted attention from a limited number of IR scholars. These are authors, associated largely with constructivism and with the English School, that have been interested in overlapping questions of political legitimacy, order, sovereignty and what they see as the global expansion (and construction) of the sovereign system. The second section will underline the limits of the existing literature. It will show that although these authors regularly refer to the idea of self-determination they have not adequately problematised it. To investigate adequately the role of the idea of self-determination historically, and its inherent tensions, I suggest we need to both build on the aforementioned literature and borrow from related interpretivist works that deal with questions of order and membership in international society.

Who is Interested in Self-Determination?

In this section I propose to locate the gap in IR, by delving into one traditional feature of its post-war intellectual history. I then contrast the discipline's lack of engagement with self-determination with the position of legal theory and political theory, for which it has been a major topic of concern over time.

International Relations and self-determination: explaining the gap

It seems that for several decades, in particular following Kenneth Waltz's 1979 *Theory of International Politics* and until the end of the Cold War, the nation-state came to be viewed in IR as an almost unchanging, if not trans-historical model. This can be attributed to the

absence of engagement with detailed historical enquiry, which is peculiar to post-World War II positivism that saw history as a site of data collection. When the IR positivist project was initiated in the decades following World War II, the purpose was to move away from what many perceived as the imprecise study of world politics epitomised by classical realists such as E.H. Carr, a historian, and Hans Morgenthau, a legal theorist. Both authors, interestingly, engaged each in their way, with questions of self-determination. Writing in 1939, E.H. Carr, for example, explained how, in 1919, the peacemakers erected self-determination as a core principle of the post-war order because nationalism was still perceived by many to promote internationalism. The consequences, he argued, resulted, however, in the making of a flawed post-war settlement.¹⁷ He thus criticised what he claimed was a utopian view, embodied principally by Woodrow Wilson, “the most perfect modern example of the intellectual in politics.”¹⁸ Morgenthau also considered issues of nationalism and self-determination. Advocating for self-determination, in *Politics Among Nations*, he advanced the argument that the principle was highly destabilising for the balance of power, going back to the 19th century, with the German and Italian reunifications.¹⁹ Post-World War II positivism, however, set aside the study of historical details, to prioritise the development of theories.

History was regularly used – and, one could add, occasionally ‘adjusted’ – to identify stability over time, leading, *inter alia*, to the view that states were the fixed units of sovereign space. Such reification meant that, “the territorial state [*was*] viewed as existing prior to and as a container of society.”²⁰ In turn, this vision also decontextualised processes of state formation. It precluded the possibility of thinking about other historical forms of spatial-temporal authority such as, for instance, empires, and about transitions from one form to the other.²¹

The assumption that world politics are constituted by recurrent patterns of identity and behaviour and that therefore the study of IR should be about the identification of such regularities is nevertheless peculiar to offensive and defensive realist theories, rather than to

¹⁷ Carr, *The Twenty Years' Crisis, 1919-1939*, 14, 46.

¹⁸ *Ibid.*, 14.

¹⁹ Morgenthau, *Politics among Nations the Struggle for Power and Peace*, 233, 352. For an account of Morgenthau's views on self-determination in relation to international stability and change see Little, *The Balance for Power in International Relations*, 115-124. Crucially, Little makes the point that Morgenthau did not see the international structure as unchanging, as others have instead argued (124).

²⁰ Agnew, “The Territorial Trap,” 58–59.

²¹ An early and emblematic exception to this trend is Doyle, *Empires*, 1986. Also, It should be noted that the assumption that world politics are constituted by recurrent patterns has been peculiar to both offensive and defensive realists, though not to all positivists.

all positivist approaches. Indeed, while liberals and neoliberals have always thought that it is possible to learn from the past, structural realists have considered largely that history was a matter of repetition over time.²² With the intent of elaborating scientific approaches, offensive and defensive realist scholars have largely had as their ontological focus continuity of practices and fixity of identities. From this perspective, transformations over time did not become irrelevant, as many critics have perhaps too easily argued, but they did become less relevant. Shaping the discipline as a whole, this tendency contributed to the de-historicising of the study of the nation-state.

Over the past two and a half decades, and coinciding with the end of the Cold War, such static conceptions have been called into question.²³ Scholars influenced by what could be termed a “delayed linguistic turn” in IR initiated the critique. With regards to statehood and sovereignty specifically, R.B.J. Walker suggested that the distinction between political theory and International Relations had rested on a modern conception of the international system – a conception in which state sovereignty constituted the timeless boundary between the domestic and international realms.²⁴ This assumption, he claimed, had dominated and impoverished the study of world politics.²⁵ His view contributed to the fostering of discussion within the discipline in its entirety as to the theoretical (and linguistic) assumptions that underpin and might prejudice how scholars conceive their object of study. This first “linguistic turn” was consequently followed by what has been termed the “practice turn.” Authors endorsing this latter turn have called for a greater engagement with “phronetic international relations theory,” to complement the study of linguistic practices. In other words, they have called for a greater engagement with social practices in order to underscore historical contingency and avoid the over-theorising of certain paradigms.²⁶ A focus on practice rather than theoretical knowledge allows for a more attentive approach to historical detail. Interestingly, as Chris Brown points out, this call has come from authors of very different backgrounds and has extended to the field as a whole.²⁷

²² Axelrod and Keohane, “Achieving Cooperation under Anarchy.”

²³ See on these various theoretical debates Dunne, Cox, and Booth, *The Eighty Years’ Crisis*.

²⁴ Walker, *Inside Outside*, Chapter 2.

²⁵ *Ibid.*, 92.

²⁶ See inter alia: Neumann, “Returning Practice to the Linguistic Turn”; Adler and Pouliot, *International Practices*; Adler-Nissen and Pouliot, “Power in Practice.”

²⁷ Brown, “The ‘Practice Turn’, Phronesis and Classical Realism,” 439.

Yet, although views that do not take history seriously have been questioned, they still seem to be influencing assumptions and topics in the discipline, if only because the nation-state is today the sole model of legitimate political authority, globally. This might help explain why, despite the resurgence of historical enquiry into world politics, the relationship between self-determination and the formation of states has not been problematised adequately. To be sure, this might not be the unique explanation. This reason, though, can be seen as complementary to the more obvious one, that for a long time, IR was concerned largely with systemic arguments and not with domestic politics with which self-determination was associated. What is curious, however, is that precisely those approaches that have questioned static views through historical enquiries and that have called for an engagement with the “domestic” in international relations, such as Walker has done, have largely neglected the study of self-determination. Moreover, it is interesting to note that whereas both Brown and Walker call for the need to historicise international relations, in their works they do not undertake substantial historical analyses on world politics.

The approaches in IR that systematically refer to self-determination are, in turn, the English School (with its grand narratives on the expansion of international society) and constructivism (with its interpretive theoretical equipment to analyse international principles and institutions over time.) Yet, neither of them has engaged with the implications of self-determination for post-imperial states domestically, and their acceptance as legitimate members of international society once statehood is recognised.

These two bodies of scholarship often refer to self-determination as the principle at the heart of both the legitimacy of states and of international society.²⁸ However, the investigation of post-independence experiences of self-determination after breakdowns of imperial orders has been neglected. In some sense, Rodney Bruce Hall is one of the rare scholars in IR to consider such experiences, though his focus remains directed towards nations and the nationalisation of state actors and their identities in the international system.²⁹ What we do find in the majority of the English School and constructivist literature concerned with self-determination is the acknowledgement that meanings attached to the idea have changed over time. However, tracing changes in meaning is insufficient for a comprehensive understanding of the place of

²⁸ See, inter alia: Clark, *Legitimacy in International Society*; Glanville, *Sovereignty and the Responsibility to Protect*, 2014.

²⁹ Hall, *National Collective Identity*, 6.

self-determination in world politics. Conceptions of self-determination have both normative and historical implications for statehood. These, I argue, are implications that should be investigated, as they relate both to the internal organisation of states and their acceptance as legitimate members of international society. Before engaging with English School and constructivist literature dealing with self-determination, it should be noted that in the period in which self-determination did not form part of scholarly concerns in IR, it was the object of attention of studies in political and legal theory. Discussed in the 19th century by political thinkers Giuseppe Mazzini, Lord Acton and John Stuart Mill, with its emergence as an international principle after World War I, self-determination has been the recurrent object of debates.

It should be noted that classical literature on nationalism engages extensively with self-determination. Authors such as Benedict Anderson, John de Breuille, Ernest Gellner and Eric Hobsbawm have all considered, to different extents, the relationship between nationalism and the former. However, it could also be said that they have largely done so in order to locate self-determination within historical processes in which nations are formed, identities are constituted, nationalisms emerge. Even John de Breuille, who calls for an interpretive approach to the study of nationalism through the use of historical enquiry, does so for the purpose of establishing a taxonomy of nationalisms (how they emerge, how they relate to each other, how they differ). In other words the questions that scholars on nationalism address are largely distinguishable from those dealt with in this thesis.

Less interested with how nationalism and nations emerge and identities are formed, this thesis deals primarily with extant ideational universes and practices that I analyse and confront. It is my sense that this, then, leads ultimately to different theoretical concerns, but also to the narration of a different story. Hence, whereas throughout my study I have engaged to different extents with the work of these authors and they have influenced my research (Anderson on questioning the possibility of hierarchies within a community of equals; Breuille in his understanding of nationalism as a form of politics; Hobsbawm in his remarks on how to comprehend concepts and realities historically), I do not think that my discussion of their views would be enriching, theoretically. Conversely, throughout my historical analysis I do engage with their works, though more in the form of endorsing or not their arguments, in the way I understand the various self-determination claims and nationalisms that I study. Ultimately, authors engaged with nationalism have adopted different lenses from those that I

adopt in this thesis, leading to different answers and stressing different preoccupations – notwithstanding my sympathies with Hobsbawm’s and Breuilly’s positions on historical research. Having clarified this point, let us now turn towards a brief overview of legal and political theory scholarship on self-determination.

Political and Legal Theory: the tendency to fix meanings?

Whenever self-determination has been invoked in international practice, similar debates have reappeared in political and legal theory. It can be said that there are *three* major areas of interest, or three major questions, that have concerned political theorists over time - although answers provided have differed. *First*, disagreement has revolved around the question of what self-determination is: whether it is a principle, a right, or a norm. The *second* broad theme of debate has concerned the establishment of who the “people” entitled to self-determination are. This has translated into questioning whether self-determination is a collective, individual or a state’s right; and whether it is indivisible, or a right that may be compromised on the basis of the public good. In the aftermath of WWI, scholars struggled to find the “objective criteria” in order to identify the “nation” that would be eligible for self-determination.³⁰ In 1945, Alfred Cobban wrote his first version of *National Self-determination*, which he later revised in 1969, acknowledging that much had changed with decolonisation, and that his views no longer reflected historical changes.³¹ He also noted that his definitions of both self-determination and the people needed to be revised.³² With the end of Cold War and the upsurge of regional conflicts in the name of ethnic allegiances, the question reappeared: could self-determination be, after decolonisation and the primacy of the principle of *uti possidetis*, directed again to ethnic groups, or nations?

In fine, the *third* topic of debate has revolved around the implications of self-determination for sovereignty and international stability, especially after the Cold War. Unable to find one answer – perhaps because of the lack of clear legal codification – discussions have turned instead, in particular in liberal theory, towards what self-determination ought to mean and how it ought to be used.³³ Among liberal theorists, this has led to speculation as to the

³⁰ E.g. Macartney, *National States and National Minorities*.

³¹ Cobban, *The Nation State and National Self-Determination*, Preface.

³² Preface to the 2nd edition, Cobban, *The Nation State and National Self-Determination*.

³³ These debates are exposed in Coppieters and Sakwa, *Contextualizing Secession*.

positive benefits and negative effects of self-determination, and the circumstances in which it should be used. Broadly, in post-Cold War normative theory there are two general types of responses. They both tend to see self-determination as a threat to sovereignty, largely equating it to secession (or, for this matter, with irredentist tendencies too.) Some have claimed that self-determination is a negative “solution”, to the extent that it implies the politicisation of group identities, and that this is destructive for a liberal and egalitarian understanding of membership.³⁴ Conversely, following Alan Buchanan, a second group of liberal authors has called for self-determination as a remedial right, to be used when no other solution seems to be applicable.³⁵

Rather than seeking endlessly to associate given meanings to self-determination, as post-Cold War liberal political and legal theorists have proposed, several international lawyers have instead been driven by the primary concern to historicise it.³⁶ If, as Martti Koskenniemi put it, “the discourse of national self-determination contains little that is self-evident or on which everyone can agree,” the principle needs then to be comprehended not in abstraction but through historical practice.³⁷ One work in particular has both historicised and studied in depth the ambiguous role that self-determination has played across time and space. This is Antonio Cassese’s *Self-determination of Peoples: A Legal Reappraisal*. Written in 1995, his work remains the fundamental but most commonly cited reference on the matter. Cassese’s analysis of self-determination looks at how, over time, ideas about self-determination have become international legal norms, and how these legal norms have affected state practice. It sheds light on the meanings that self-determination was imbued with over the twentieth century, and argues that, overall, self-determination “was advanced in at least five different versions:” as a criterion for territorial change (populations should be able to choose via elections or plebiscite which state they belong to); as a democratic principle calling for the consent of the governed in any sovereign state; as an anti-colonialist principle; as a right for minorities within sovereign states; and as a principle of non-intervention.³⁸

³⁴ See Barry, *Culture and Equality*.

³⁵ Buchanan, *Secession*; Macedo, *Secession and Self-Determination*.

³⁶ These are only a few examples: Emerson, “Self-Determination”; Hannum, *Autonomy, Sovereignty, and Self-Determination*; Koskenniemi, “National Self-Determination Today”; Cassese, *Self-Determination of Peoples*; Simpson, “The diffusion of sovereignty,” 1996; Ratner, “Drawing a Better Line”; Knop, *Diversity and Self-Determination in International Law*.

³⁷ 244-245 Koskenniemi, “National Self-Determination Today.”

³⁸ Cassese, *Self-Determination of Peoples*, 316.

These are broad “versions” that Cassese scrutinises in great depth in his book, highlighting the developments, implications and limits of each for international law and practice. Cassese also suggests that self-determination’s varied meanings have contributed to its “in-built ambivalence,”³⁹ leading him to contend that “the ‘political’ and ‘popular’ (as opposed to legally accurate) conception of self-determination is having disruptive effects on the traditional setting of the world community and indeed might even act as a sort of earthquake.”⁴⁰ Hence, whereas Cassese’s work influences this thesis, it also remains first and foremost a study in public international law, explicitly positivist in its purpose.⁴¹ This study conceives international law as *one* defining dimension of self-determination, along with other practical and ethical considerations, and thus departs from Cassese’s strictly legalistic interpretations.

In IR, the investigation of historical changes in self-determination can be seen more broadly as part of the interpretivist practice to call into question the “assumed naturalness that we live in a world of nation-states as political communities.”⁴² Stemming from this concern, and being less interested in the direct question of what self-determination “is”, constructivists have investigated how it has been used and understood over time. Increasingly sympathetic to interpretivist ontologies and long committed to historical enquiry, English School proponents have joined them in this effort. However, as we are about to see, despite recurrent reference to shifts in meaning associated with self-determination over the twentieth century, only rarely have these shifts been studied in depth.

Historicising Self-Determination:

The Contributions and Limits of English School and Constructivist Scholarship

English School and constructivist scholarship on self-determination concurs in locating the roots of self-determination in American and French revolutionary ideals about equality and popular sovereignty.⁴³ 1776 and 1789 are thus often cited, though possibly romanticised, as the birth dates of the concept. However, only seldom are these key moments examined.

³⁹ Ibid., 6.

⁴⁰ Ibid., 342.

⁴¹ I refer here to positivist in the legal, rather than epistemic sense.

⁴² Hurrell, *On Global Order*, 2007, 121.

⁴³ As a case in point see: Bukovansky, *Legitimacy and Power Politics the American and French Revolutions in International Political Culture*, 2002.; Philpott, “In Defense of Self-Determination,” 352.

Similarly, its nineteenth century invocations and understandings are also overlooked.⁴⁴ The majority of IR works commence with World War I, when self-determination became a widely debated principle internationally. Although its application was limited to the areas formerly under the rule of old Euro-Asian empires, self-determination came to be a principle of world order, foundational to the constitution of new states. Extant scholarship also acknowledges that the Nazis and Fascists invoked self-determination as defined after World War I to justify the meticulous exclusion of minorities and to rationalise genocide.⁴⁵ There is a general agreement that “existing formulations of the right to self-determination emerged from World War II morally and politically bankrupt.”⁴⁶ However, inquiries into the interwar period are often limited to acknowledging that self-determination was interpreted problematically in ethnic terms, and was for this reason redefined after World War II. This, the literature recognises, coincided with the decolonisation wave. It is indeed on the post-war decolonisation era that IR scholarship has mostly focused – possibly influenced by the conception that this was when the contemporary world order was most clearly delineated. Despite the relative abundance of examination of the decolonisation period, what self-determination came to mean between the adoption of the UN Charter and the enactment of the UN Covenants on Human Rights is a matter of scholarly discord.

In this section, I will show how IR works on self-determination’s history are foundational for this thesis, since they allow the identification of dynamics of stability and change over time. However, I will also stress what I see are two of their limits. First, by focusing on the relationship between self-determination, sovereignty and human rights after World War II, they do not adequately investigate the implications of self-determination for the constitution of states after imperial demises. Second, they largely associate the study of self-determination with other cognate concepts and practices of world politics, detracting from its fundamental and yet contradictory role for twentieth century world order. Antonio Cassese’s thorough investigation overcomes these limits, though, because of the nature of his work, the author does not engage with broader normative structures that have influenced self-determination.

⁴⁴ Two important exceptions being Fabry, *Recognizing States*; Scott, “The Image of the State and the Expansion of the International System.”

⁴⁵ Jackson Preece, “Minority Rights in Europe,” 10.

⁴⁶ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 200.

In 1990, James Mayall published a comprehensive study on self-determination, starting with World War I and with particular emphasis on the post-colonial period. He described the “national idea” embodied by self-determination as the legitimating ground of nation-states and international society.⁴⁷ He argued that self-determination had become foundational to nationalism over the twentieth century. After 1960, it had come to “fix” the political and geographical world map through the formation of new states. This, he argued, had led to the universalisation of international society.⁴⁸ He also devoted several chapters of his book to the economic and political implications of post-colonial self-determination for the new states and international society. Importantly for this thesis, he underscored a tension (which, however, he did not investigate) between the international understanding of self-determination, embedded in popular sovereignty and attached, from World War II, to human rights, and exclusive practices associated to it domestically. He suggested that whereas “there is no conflict between the doctrine of self-determination and that of human rights,” “the principle of national self-determination built into the system [*has*] turned out to be much less permissive, or popular, than attention to its philosophical origin and meaning might lead one to expect.”⁴⁹

IR authors writing on self-determination have all, in some way, taken stock of one or another facet of Mayall’s claim on post-war self-determination and its ambiguous relationship with human rights and sovereignty. Accordingly, there are two sets of views that can be found in the literature. The first sees self-determination as opposed to human rights, and is the approach prominently upheld by Robert Jackson.⁵⁰ Although Jackson published his book the same year as Mayall, he had advanced this proposition in previous work.⁵¹ The second is the more recent view that self-determination and human rights are part of the same normative regime. This is the argument is most notably advanced by Christian Reus-Smit, who sees self-determination and human rights as dependent one upon the other.⁵² It should be mentioned that there is a third approach in the field, which does not directly engage Mayall’s work. It considers self-determination as a rhetorical tool in domestic and international politics, in no way connected (or opposed) to human rights politics. In different ways, both Daniel Philpott and Neta Crawford advance this position, suggesting that self-determination was used to

⁴⁷ Mayall, *Nationalism and International Society*, 1990, Introduction.

⁴⁸ *Ibid.*, 26.

⁴⁹ *Ibid.*, 35-41.

⁵⁰ Jackson, *Quasi-States*, 1990; Moyn, *The Last Utopia*.

⁵¹ Jackson, “Quasi-States, Dual Regimes, and Neoclassical Theory.”

⁵² Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001; Reus-Smit, *Individual Rights and the Making of the International System*, 2013.

foster change in colonial ideas and practices.⁵³ These works find a direct equivalent in historian Erez Manela's argument. Manela contends that ideas on self-determination shaped thoughts on independence within the colonised world between what the author terms "the 1919 Wilsonian movement" and the 1950s.⁵⁴ While this thesis relies on the historical insights of these three authors, it also accepts limits to their work, as advanced by Reus-Smit. Namely, they ignore the United Nations as the post-World War II forum of discussion, where human rights and self-determination came to be joined and justified on universal moral grounds.⁵⁵

Hence, with regards to post-World War II self-determination and its relation with human rights and sovereignty, the first author to have fully elaborated his position was Robert Jackson. Jackson argued that through decolonisation, self-determination had become a "categorical right" leading to what he termed "negative sovereignty" for post-colonial states.⁵⁶ He made the point that until 1960 "positive sovereignty," understood as the "capacity of a government to provide political goods to its citizens,"⁵⁷ defined membership of international society along explicit criteria of "civility."⁵⁸ However, decolonisation led, via the categorical allocation of self-determination, to "a negative sovereignty game" for the newly formed states. In other words, because of the categorical imperative for self-determination, post-colonial states were internationally granted the attributes of "juridical statehood" (which he loosely associates to the Montevideo criteria), without being ready for what he terms "empirical statehood"⁵⁹ (which he views as the pre-World War II civilisational criterion for sovereignty.) To Jackson, this was the direct cause of serious human rights violations within the newly formed states.⁶⁰ Following from this, he saw the development of the international human rights regime as a reaction against categorical self-determination and Third World "quasi"-statehood.

⁵³ Philpott, *Revolutions in Sovereignty*, 2001; Crawford, *Argument and Change in World Politics Ethics, Decolonization, and Humanitarian Intervention*, 2002; Manela, *The Wilsonian Moment*, 2007; Simpson, "The United States and the Curious History of Self-Determination."

⁵⁴ Manela, *The Wilsonian Moment*, 2007.

⁵⁵ Reus-Smit addresses this limit to Crawford and Philpott: Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 158 I believe that the same comment can be made to Manela's work.

⁵⁶ Jackson, *Quasi-States*, 1990, 24; 76.

⁵⁷ Ibid., 12.

⁵⁸ Ibid., 50–51.

⁵⁹ Ibid., 21; 25.

⁶⁰ Ibid., 140.

Over time, numerous IR scholars have more, or less, explicitly endorsed Jackson's argument. Jack Donnelly has indeed suggested that human rights have become, with decolonisation, the new standard of civilisation by which to judge the domestic behaviour of illiberal or quasi-states.⁶¹ Luke Glanville has highlighted the predominance of a non-interference norm during the Cold War, associated to categorical self-determination.⁶² To some extent Jackson's argument also finds support in international history, both in Brad Simpson's recent work on the use of self-determination in US foreign policy and in Samuel Moyn's work on the development of human rights politics during the twentieth century.⁶³ Moyn's primary concern is directed at transnational activist human rights movements in the 1970s, with a particular focus on the US. Jackson instead focuses on the institutional politics of human rights, and that constitutes a fundamental difference. Still, Moyn's argument "that human rights entered global rhetoric in a kind of hydraulic relationship with self-determination: to the extent the one appeared, and progressed, the other declined, or even disappeared"⁶⁴ is a direct reverberation of Jackson's claim.

Whereas both Jackson and Moyn rightly stress in their respective works how self-determination accelerated the process of decolonisation, the argument that self-determination and sovereignty are separate from human rights politics is problematic. The first reason has already been highlighted by Reus-Smit, who shows how Jackson ignores the discussion about human rights that occurred during decolonisation debates at the United Nations (UN).⁶⁵ Jackson recognises that self-determination was internationalised before 1960, yet he fails to mention that post-colonial states, and to a lesser extent colonial movements, relied on human rights to obtain self-determination during the 1950s and 1960s.⁶⁶ Reus-Smit has also recently advanced similar critique of Moyn's work, arguing that the wrongly ignores the importance of human rights in the reconstitution of the right to self-determination.⁶⁷

Sharing Reus-Smit's concern, my work addresses specifically one additional limitation to Jackson's view. In *Quasi-States* Jackson establishes a connection between weak statehood

⁶¹ Donnelly, "Human Rights," 1998.

⁶² Glanville, *Sovereignty and the Responsibility to Protect*, 2014, 25.

⁶³ Simpson, "The United States and the Curious History of Self-Determination."

⁶⁴ Moyn, *The Last Utopia*, 89.

⁶⁵ Jackson, *Quasi-States*, 1990, 106.

⁶⁶ Reus-Smit has first made these points in Reus-Smit, "Human Rights and the Social Construction of Sovereignty," 2001, 524–525.

⁶⁷ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 165–183.

and violent domestic state practices, without any mediating factors. Yet nowhere in that book does he investigate what happened within these so-called “quasi-states” once self-determination was recognised.⁶⁸ Jackson claims that a shift occurred from a positive to a negative sovereignty game, because of the allocation of categorical self-determination to political communities unfit for positive, independent statehood. Becoming in 1960 a “categorical right” for all, Jackson suggests that self-determination led to the granting of statehood to political communities that, however, were not yet ready for what he terms full, “positive sovereignty.” Because of the categorical imperative for self-determination, post-colonial states were internationally granted the attributes of “juridical statehood” without being ready for what he terms “empirical statehood.”⁶⁹ Hence, in his view, if human rights violations and discrimination have been the norm in post-colonial states, the reason is to be found in the institutional incapacity of these “quasi-states.”

Unlike Jackson, I understand regimes of self-determination as reflecting one conception of a certain, broad order, to which specific rights and responsibilities are attached *beyond* the recognition of (one, single) statehood. The realisation of self-determination thus bears direct consequences upon the recognition of (legitimate) statehood. Rather than understanding international hierarchies in terms of variations in sovereignty, I suggest that after 1960, these depended upon liberal expectations such as human rights, attached to self-determination, not being satisfied. Accordingly, this thesis is more at home with the second view present in the discipline, advanced by Reus-Smit. This view sees self-determination and human rights as part of the same post-World War II normative regime. In this work, such regime is understood as having defined liberal expectations behind recognitions of self-determination.

According to Reus-Smit, the conceptual and moral foundations of self-determination were reconstituted after World War II, during UN negotiations on the two International Covenants on Human Rights.⁷⁰ That the concept of self-determination should be resurrected after the war in ethnically blind terms is no novelty.⁷¹ Reus-Smit adds, to this traditional account, that throughout the 1950s newly independent post-colonial states further rehabilitated it. They did so by “grafting the right to self-determination on to emergent human rights norms, arguing

⁶⁸ Admittedly, he investigated the domestic realms of several African post-colonial states in another previous work, Jackson and Rosberg, *Personal Rule in Black Africa*.

⁶⁹ Jackson, *Quasi-States*, 1990, 21; 25.

⁷⁰ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 168.

⁷¹ See on this matter Emerson, “Self-Determination,” 463.

that the former was a necessary prerequisite for the latter.”⁷² Reus-Smit first advanced this argument in 2001 and Roland Burke has more recently echoed it in international history.⁷³ Burke also supports the view that “the right to self-determination [has come to] constitute the nexus between decolonisation and human rights.”⁷⁴

Reus-Smit views self-determination, sovereignty and human rights as three distinct, yet interrelated core principles of the post-World War II world order. He argues that human rights legitimised the invocation of self-determination claims and grounded the norm on universal moral foundations. This, in turn, led to the globalisation of the nation-state.⁷⁵ He thus suggests that “treating these as separate, mutually contradictory regimes, obscures the justificatory role that human rights principles have performed in the constitution of the modern sovereign order.”⁷⁶ Indeed, Reus-Smit contends, self-determination through its embedding in human rights rhetoric “delegitimis[ed] the institution of empire, universalised the organising principle of sovereignty and helped construct one of the principal institutions codifying liberal norms of legitimate statehood – the international human rights regime.”⁷⁷ As mentioned, this thesis builds on Reus-Smit’s argument with regards to decolonisation, and engages with the relationship between self-determination, sovereignty and (human) rights. It does so beyond the decolonisation era. And, it does so in relation to international expectations attached to self-determination that, I suggest, exert direct influence on the existence and legitimacy of new states formed in the name of self-determination.

It should be noted that despite being conceptually opposed, Jackson and Reus-Smit’s views present a shared limitation in their approach to self-determination. They both disregard the role of self-determination beyond recognitions of independence and beyond the decolonisation era. Crucially, the role of self-determination did not just end once European overseas colonies became independent. The 1975 Helsinki Final Act of the CSCE recognised that self-determination was applicable beyond the colonial context, and so did the 1990 CSCE Paris Charter, followed soon after by the dissolution of the Soviet Union and Yugoslavia. Whereas since decolonisation the international norm of self-determination might have not

⁷² Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 169.

⁷³ Reus-Smit, *The Moral Purpose of the State*; Burke, *Decolonization and the Evolution of International Human Rights*, 2010. This footnote should be to ‘Human Rights and the Social construction....’

⁷⁴ Burke, *Decolonization and the Evolution of International Human Rights*, 2010, 37.

⁷⁵ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 192.

⁷⁶ Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001, 520.

⁷⁷ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 32.

changed in its somewhat loose formulation, similarly to the pre- and post-World War I period, throughout the 1990s its invocations have come to be associated with ethnic and minority claims.

Jennifer Jackson Preece engages with the question of self-determination over the twentieth century as a whole. She underscores specifically one cognate dimension to the self-determination story: minorities and their rights.⁷⁸ She thus traces the history of minorities from Westphalia to the end of the Cold War and, interestingly for this study, she also scrutinises the relationship between minority rights and self-determination over the twentieth century. Jackson Preece first focuses on post-World War I's recognition of ethnic diversity and the Minority Treaties, which she qualifies as a "failure" of the League of Nations. To her, they "discredited minority rights" as "minorities themselves tended to be viewed with suspicion."⁷⁹ She then continues with World War II, highlighting the "general consensus . . . in favour of the view that human rights by themselves, rather than coupled with more specific minority provisions, were the preferred response to minority questions."⁸⁰ In other words, what she calls the "assimilationist view of democracy," paralleled by the emergence of human rights norms, led to the UN approach that self-determination only applied to statehood after (colonial) empire, and that diversity should not be recognised domestically.⁸¹ With the Helsinki Final Act and other CSCE documents, domestic rights of minorities and self-determination came to be associated again.⁸² Two decades later, Jackson Preece argues, this association found even greater expression as diversity and democracy became again compatible in the history of the breakup of Yugoslavia.⁸³

Jackson Preece's focus on minority rights in association with self-determination, her consideration of the domestic level in making sense of international changes, and her interest in the post-Cold War period are crucial contributions. These are all aspects that this thesis acknowledges and will engage in greater detail in the following chapters, in particular with respect to the breakup of Yugoslavia. However, her work suffers from an important limitation in the detailed story that it tells about the role of self-determination in world politics. It does

⁷⁸ Jackson Preece, "Minority Rights in Europe"; Jackson Preece, *National Minorities and the European Nation-States System*; Jackson Preece, "Self-Determination, Minority Rights and Failed States."

⁷⁹ Jackson Preece, "Minority Rights in Europe," 84.

⁸⁰ *Ibid.*, 86.

⁸¹ *Ibid.*, 84–86.

⁸² *Ibid.*, 90–91.

⁸³ Jackson Preece, "Democracy, Minority Rights and Plural Societies," 611.

not adequately articulate the relationship between the two defining dimensions of self-determination that she highlights: on the one hand, domestic claims and allocation of rights in the name of self-determination (with her focus on minorities), and on the other, the constitution of (legitimate) states within international society, also in its name. I hope that the shift towards a holistic approach systematically including both the domestic and international realms will help engage in a more encompassing manner this relationship - a move that Jackson Preece is less concerned with, given her primary focus on minority rights.

Jackson Preece's work is no exception to what seems to be a general tendency in IR to subordinate the study of self-determination to a primary focus on other cognate concepts, principles or practices. Hence, not only are works on self-determination scarce in IR, but, with the exception of Mayall in 1990, the study of self-determination has been used largely to elucidate related norms and institutions (such as sovereignty, human rights and minority rights), and associated practices (such as nationalism but also military and humanitarian intervention.)⁸⁴ Yet, "if sovereignty," as Hurrell contends, "has provided the basic institutional framework of the society of states, it was national self-determination that came ever more to provide the political power and the moral meaning to the idea of an international society."⁸⁵ To be sure, the extant literature recognises that self-determination is a core and complex principle of the twentieth century world order. However, the study of IR lacks a historical account elucidating its role for the internal definition of states, for their acceptance as legitimate members of international society, and for the ordering of world politics.

Statehood and Order in the Study of World Politics

As I have argued, IR literature concerned with shifts in meanings associated to self-determination has tended to overlook its role in processes of state formation. While recognising its constitutive role, this literature has not engaged directly with the relationship between self-determination and (legitimate) statehood after the breakdown of imperial orders. This thesis suggests that the implications of self-determination, once statehood is recognised, represent a crucial dimension to the story of the expansion of the nation-state and of its

⁸⁴ See respectively: Jackson, *Quasi-States*, 1990; Reus-Smit, *Individual Rights and the Making of the International System*, 2013; Jackson Preece, "Minority Rights in Europe"; Hall, *National Collective Identity*; Welsh, "Taking Consequences Seriously" in Welsh (ed.) *Humanitarian Intervention and International Relations*.

⁸⁵ Hurrell, *On Global Order*, 2007, 121.

legitimacy, both domestically and internationally. These are most obviously implications for the domestic delineations of political communities, since self-determination constitutes the transitional principle from empires defined by hierarchy, to nation-states defined at least in theory by equality. A second set of implications relates to the membership of new states within international society, in contexts of reconfigurations of world order. This thesis considers these two sets of implications as complementary, and reflective of specific conceptions of self-determination, at given times. Yet, they are surprisingly excluded from historical accounts of self-determination in IR. Two cognate bodies of literature might then be helpful in getting a sense of such implications, although they deal only tangentially with self-determination. The first is a small collection of interpretivist works interested in concepts and practices of state formation and recognition. The second is a larger set of works concerned with questions of order and membership in international society. In this section I will briefly highlight their respective contributions, and in so doing I will show how this thesis is fundamentally embedded in these works, but also how it seeks to contribute to some of their views.

From empires to nation-states: state formation and legitimacy in IR

Although “trans-historical” visions of the nation-state have long been contested in IR, histories of empires have been overlooked until recently - Michael Doyle’s 1986 comprehensive study on their functioning being a notable exception.⁸⁶ Over recent years however, ends of empires have increasingly attracted the attention of a growing number of scholars in the field.⁸⁷ Attempting to make sense of trajectories of empires as preceding the formation of the contemporary sovereign order, these scholars have joined a similar burgeoning interest in the field of international history. Indeed, as historians Jane Burbank and Frederick Cooper have recently argued, the “exploration of the histories of empires, both old and recent, can expand our understanding of how the world came to be what it is, and open a wider perspective on the organisation of political power.”⁸⁸

⁸⁶ Doyle, *Empires*, 1986.

⁸⁷ See inter alia: Kupchan, *The Vulnerability of Empire*, 1994; Motyl, *Imperial Ends*, 2001; Spruyt, *Ending Empire*.

⁸⁸ Burbank and Cooper, “The Empire Effect,” 239.

Whereas Burbank and Cooper do not refer to self-determination in the process that they highlight, in IR, Reus-Smit specifically associates the investigation of ends of empires in the twentieth century with invocations of self-determination.⁸⁹ As already mentioned, Reus-Smit is concerned with self-determination in the period coinciding with the wave of post-World War II decolonisation. He shows how invocations of self-determination have played a part in delegitimising empire across time and space. He also suggests that over the twentieth century, self-determination has legitimised the formation of new states after imperial demises, making self-determination the nexus in this process. Certainly, in tracing how empires have come to an end, Reus-Smit accomplishes the task posed by Burbank and Cooper.

The same problem previously highlighted, however, persists. Namely, the implications of self-determination for statehood, both domestically and internationally, once sovereignty is recognised, are disregarded. In IR this seems to be reflective of a broader tendency within the field as a whole. Because authors identify fundamental systemic change with a shift in the organising principle of the system, they view the external reconfiguration of the system according to that principle. They are thus ultimately concerned with the emergence of a system based on externally independent states, largely overlooking the internal nature of new states and their relationship with the international. This, I argue, is problematic for at least two reasons. First, it restricts the story of the expansion of international society to the establishment of new states, overlooking subsequent implications for international membership and order. Second, it neglects aspects largely dismissed from the study of IR as belonging to the domestic realm.

Over the past decade two authors have come close to this problématique, highlighting that although self-determination is crucial to the constitution and acceptance of new states, its relationship with state recognition is not as simple as is often assumed. In 2006 Amy Scott argued in her doctoral thesis that the concept of the nation has become a prevalent way of conceptualising populations of states through the idea of self-determination. Hence, Scott contends, the state – which she apprehends in terms of political community - has been construed in IR theory as the “inevitable endpoint of self-determination.”⁹⁰ Scott rightly claims that the concept of the state lacks historical contextualisation. She seeks to fill this gap by thinking about self-determination and people as being prior to the state.

⁸⁹ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, Chapter 5.

⁹⁰ Scott, “The Image of the State and the Expansion of the International System,” 27.

A few years later, in 2010 Mikulas Fabry examined practices used to recognise new states, from the eighteenth century to the post-Cold War period. Crucially for this study, the author argues that, “for the past two hundred years state recognition has been tied to the idea of self-determination of peoples.”⁹¹ Taking this statement as a starting point, Fabry analyses historically international practices associated with the recognition of new states in the name of self-determination. These two theoretical approaches are foundational to the argument of this thesis. The acknowledgement of state formation and recognition as complex and long-term processes historically and theoretically sheds light on what Scott terms the “monist conception of the state.”⁹² However, their contribution remains limited empirically, to the extent that neither work has moved its respective historical analysis of states beyond the act of international recognition.

Scott, Fabry, and also Reus-Smit provide this thesis with indispensable intellectual tools by which to think about the state as a historical construct that, over the twentieth century, was constituted and legitimised in the name of self-determination. In this study, though, I wish to move beyond strict acts of recognition, both historically and conceptually, and in so doing participate in enriching extant views. First, I show that a linear tale of progressive equality attached to the expansion of the nation-state is problematic. Second, I advance as part of the overarching argument of the thesis that international ideas of self-determination have political and moral implications in regards to statehood. These are implications in terms of expectations about domestic behaviour, which have been attached to self-determination, at given times and in specific ways. Scholarship acknowledges to some extent that international expectations about rightful domestic behaviour have been attached to self-determination through other norms and practices, such as humanitarian interventions and international administration.⁹³ However, a study taking as a primary focus the idea and practice of self-determination, uncovering what expectations specifically have been attached to self-determination, still needs to be written.

Hence, the argument that self-determination involves expectations once statehood is recognised is not entirely new. It comes close, for example, to Luke Glanville’s contention

⁹¹ Fabry, *Recognizing States*, 9.

⁹² Scott, “The Image of the State and the Expansion of the International System,” 53.

⁹³ See in particular the work of Nehal Bhuta for a clear and consistent articulation of the problem.

that, since it was first articulated in the sixteenth century, sovereign authority has always had externally defined responsibilities attached to it.⁹⁴ These have been international, but also domestic responsibilities, towards national societies. Indeed Glanville shows that since the American and French Revolutions, state responsibilities have been increasingly understood in relation to the respect of popular sovereignty, domestically.⁹⁵ My argument builds upon Glanville's, but differs from it in two principal ways. First, I argue that, internationally, responsibilities come to be attached to the realisation of self-determination whilst the principle is negotiated and redefined. Second, whereas Glanville suggests that there are domestic responsibilities attached to sovereignty, he does not scrutinise consistently the implications on domestic state behaviour. I hope to contribute to his view by bringing insights from the domestic realm and by understanding how these affect the story of the expansion of international society.

The historical picture that emerges from this research, of both self-determination and statehood after empire, is complex. Self-determination appears less as a clear-cut principle bringing hierarchy and empire to an end, in favour of equality and the nation-state, and more as an ambiguous idea sustaining contradicting views and practices. This is true both for the domestic and for the international level. If the domestic picture is blurred, so too is the international one, inasmuch as self-determination has been invoked recurrently (though, of course, not exclusively) at moments of reconfiguration of world order. Transitions are long, domestically and internationally. As the principle of transition from empires (or hierarchical forms of authority) to nation-states, self-determination embodies dynamics of both continuity and change.

We have seen that the extant literature on self-determination and state recognition does not have much to tell us about the role of self-determination, its tensions and implications over statehood *after* imperial retrenchment and *after* statehood is recognised. A second set of literature concerned with world order and membership within international society thus provides this study with additional insights.

If self-determination has come to lie at the heart of the legitimacy of new states over the twentieth century, it would seem natural to follow the arguments of the English School

⁹⁴ Glanville, "The Antecedents of 'sovereignty as Responsibility'," 234.

⁹⁵ Glanville, *Sovereignty and the Responsibility to Protect*, 2014, Chapter 3.

literature on the expansion of international society, to make sense of its role. Interestingly, and possibly for the reasons highlighted in the first section of this chapter, the traditional literature on international society and its expansion neglects questions of self-determination. Even Ali Mazrui, in his reflections on post-colonial Africa in Bull and Watson's *Expansion of International Society*, did not refer to self-determination, despite it being the rationale of *uti possidetis*.⁹⁶ Over the past two and a half decades, however, English School authors have increasingly acknowledged self-determination as foundational to contemporary membership of international society. James Mayall and Robert Jackson stressed it at the start of the 1990s. More recently Ian Clark and Andrew Hurrell have underlined it again, linking self-determination with international legitimacy.⁹⁷

Ian Clark has argued that self-determination has become the accepted criterion of membership of international society, even if the criterion is not consistently applied.⁹⁸ While his work states its role, it does not tell us much about how this has historically functioned, nor about the ideas, values and norms that self-determination, as the standard of membership in international society, conveys. Andrew Hurrell has instead associated self-determination with the challenges brought to global order, suggesting that self-determination has a twofold purpose: it both destabilises and orders world politics.⁹⁹ This thesis thus takes up the challenge to understand how this twofold purpose has translated into historical practice. The picture that emerges, I will show, is ambivalent, if not contradictory.

Conclusion

This chapter has laid the foundations for the further consideration of the role of self-determination and its inherent tensions, across time and space. I have shown that in IR, the study of self-determination has attracted the interest of a limited number of scholars, all principally associated with constructivism and the English School. These authors recognise that self-determination is central to the legitimacy of new states and to the idea of an international society. Works that deal with the history of self-determination recognise that its meaning has changed over time, yet they largely overlook the scrutiny of its role in the

⁹⁶ Ali Mazrui "Chapter 19: Africa Entrapped" in Bull and Watson, *The Expansion of International Society*.

⁹⁷ See respectively Clark, *Legitimacy in International Society*, 116; Hurrell, *On Global Order*, 2007, 127.

⁹⁸ Clark, *Legitimacy in International Society*, 116.

⁹⁹ Hurrell, *On Global Order*, 2007, 127.

constitution of new states, both domestically and internationally, and in ordering world politics. Moreover, they tend to subordinate the study of self-determination to other international concepts and practices. Scholarship dealing directly with the role of self-determination, I have argued, is limited to a set of works on state recognition, questions of order and membership in international society. However, even these do not tell us much about the implications of self-determination *after* statehood is recognised. In an effort to overcome these limitations, the next chapter will propose an alternative argument concerning the history and role of self-determination during the twentieth century's waves of expansion of international society.

Hierarchy, Equality and the Expansion of International Society

As we have seen in the previous chapter, constructivists and English School scholars recognise that throughout the twentieth century the principle of self-determination has been pivotal to the end of empires and the ensuing formation of new states. Yet, whereas this scholarship depicts the idea of self-determination as central to the legitimacy of new states and international society, it does not tell us much about what happens *after* statehood is recognised. Because IR authors identify systemic change with a shift in self-determination, as an organising principle of the system, they view the external reconfiguration of the system in accordance with that principle. Being ultimately concerned with the emergence of a system based on externally independent states, I have shown, they tend to overlook the internal natures of these states. This tendency is, I believe, problematic. First, it restricts the story of the expansion of international society to the establishment of new states, overlooking subsequent implications for international membership and order. Second, it neglects fundamental aspects, often dismissed from the study of IR as “merely” belonging to the domestic realm. We are then left unable to adequately explain, for example, one of the key puzzles of the politics of self-determination in the twentieth century: how, after World War II, can self-determination be embedded in the language of human rights, while institutionalised hierarchy and legal inequality is the norm both in the arrangements of international society, and within many “self-determined” states?

That self-determination has been foundational to the creation of new states throughout the twentieth century is an essential aspect of the expansion of international society. This, we know. However, it is also just one part of the story. The assumption that self-determination ends where sovereignty begins, underestimates the ambiguous role that self-determination has had before, but crucially, also, *after* statehood is recognised, both domestically and internationally. I argue in this thesis that twentieth century understandings and usages of the idea of self-determination point to the existence of a recurrent tension. This is a tension between the egalitarian aspirations of self-determination on one hand, and the practices of hierarchy associated with self-determination on the other. It should be said that these are not practices that are attached exclusively to self-determination, but they encompass a whole range of material and ideational factors that directly relate to it. This tension, as we shall see,

covers three different levels of world politics. First, it has been embodied in the disciplining of international society, when self-determination was redefined, during each wave of state formation, as the standard of legitimate membership and statehood. Second, the tension has manifested itself at the domestic level of the newly “self-determined” states as political élites delineated the boundaries of national political communities. Third, and as an implication of all this, the tension is noticeable in the ordering of states within international society.

The purpose of this chapter is to systematise the contentions that I advance in this study and to lay its theoretical foundations. In the first section I lay the intellectual ground on which to comprehend my claims, both historically and theoretically. I then detail the chief argument of the thesis.

Between Hierarchy and Equality: Theory and Practice of Self-Determination

In 1969, Alfred Cobban argued that, “by 1918 nationalism and democracy were generally taken as synonymous in the thought of the Western nations.”¹⁰⁰ The nation-state was the democratic expression of the consent of the governed, made possible through the idea of self-determination. After World War I, self-determination conveyed both the acknowledgment of equality of citizens in the polity and, though confused, the recognition of diversity of national groups. This was no radical departure from the past. Rather, as Cobban suggested, it was the result of historical contingency.¹⁰¹ Historical events since the American and French revolutions and the works of numerous political thinkers had contributed to defining – though loosely – the content of self-determination. Because its conceptual foundations can be found in John Locke’s and Jean-Jacques Rousseau’s writings on popular sovereignty, the idea of self-determination emerged historically alongside political equality and equality of rights. However, as we will see, in the 19th century it was also imbued with more exclusivist interpretations as to who could be regarded as the moral equal, both domestically and internationally.

¹⁰⁰ Cobban, *The Nation State and National Self-Determination*, 43–44.

¹⁰¹ *Ibid.*, 44.

The conceptual foundations of self-determination: popular sovereignty and Empire

In 1690, Locke defined the natural state of man as “perfect freedom” and “equality.” By no “manifest declaration of his Will” has God “set one above the other.”¹⁰² As a result, as indicated by Luke Glanville, for Locke “individuals contract with each other to create a society, but they are not contractually obliged to their government. Governors are merely trustees who can be removed if they fail their trust.”¹⁰³ So not only are governors accountable to their own people, but, if deemed necessary, the people have the power to dissolve a government and constitute a new one. Locke’s conception of popular sovereignty was integrated later in the American Declaration of Independence.¹⁰⁴ Equality and freedom were in the Declaration on the grounds of the “consent of the governed.” Rousseau then recovered Locke’s conception, adding that, “every authentic act of the general will obliges or favours all citizens equally.”¹⁰⁵ More precisely, for Rousseau it is the “laws’ strict impersonality or universality” that produces an “equality between the citizens such that they all engage themselves under the same conditions and should all benefit from the same rights.”¹⁰⁶ Glanville has identified an important tension in Rousseau’s thoughts on equality, between individual and national rights. In Rousseau’s writings, the rights of man are in fact in contradiction with the demands of the general will, insofar as the social contract gives the “body politic an absolute power over all its members.”¹⁰⁷ The “people” expressing the general will thus become for Rousseau a unified body. He explained this tension as a shift from natural to civil liberty. In 19th century theory and 20th century practice though, the notion of general will was used to justify very different visions of what the unity of the body politic meant.

To be sure, neither Locke nor Rousseau wrote expressly about self-determination. Several nineteenth century political thinkers on self-government however remodelled their theories of consent of the governed and popular sovereignty. In particular, Rousseau’s vision of the people as a single unit of interest influenced various authors who made the association between self-government and external non-interference. Indeed, in the early nineteenth

¹⁰² Locke, *Two Treatises of Government*, II.4.

¹⁰³ Glanville, *Sovereignty and the Responsibility to Protect*, 2014, 63.

¹⁰⁴ Bukovansky, *Legitimacy and Power Politics the American and French Revolutions in International Political Culture*, 2002, 215.

¹⁰⁵ Rousseau, *The Social Contract*, CS: II: iv.

¹⁰⁶ Rousseau, quoted in Putterman, *Rousseau, Law and the Sovereignty of the People*, 12.

¹⁰⁷ Rousseau, quoted in Glanville, *Sovereignty and the Responsibility to Protect*, 2014, 67.

century Lord Castlereagh hinted at such an equation, suggesting that in the name of national equality, “people should be allowed to determine their own internal political arrangements.”¹⁰⁸ Giuseppe Mazzini and John Stuart Mill further elaborated this idea. In his writings in support of a unitary Italian nation, Mazzini alluded to the two dimensions, the will of people and non-interference, as two faces of a single concept. For Mazzini, the Italian nation would bring alien rule to an end through the exercise of self-determination. In turn, national independence in the form of the nation-state would then allow fully-fledged individual liberty.¹⁰⁹ JS Mill also developed a similar conception of “liberal nationalism.” In his *Considerations on Representative Government* Mill claimed that “a completely popular government is the only polity which can make out any claim to this character” namely, “the claim of all to participate to sovereign power.”¹¹⁰ Similarly to Mazzini, Mill stressed that this would be “next to impossible in a country made up of different nationalities.”¹¹¹

This conception of “liberal nationalism” was paralleled in the 19th century by the works of German and Central European romantics. *Mitteleuropean* romantics saw nations as groups defined along what Glanville has elegantly termed “the mystique of the Volk.”¹¹² In other words, a nation was constituted by a group of equal members linked by shared historical traditions and kinship, if not just ethnic ties. Equality of rights for individuals within the community was thus equated to kinship allegiances. Over the years, visions on ethnic nationality and institutional nationalism were integrated in the discourses of public intellectuals and leaders of minority groups, which in Central and Eastern Europe fought for the establishment of their “own” nation-states. The unity of these (ethnic) groups was given further expression in 1919 at the Paris Peace Conference. Despite Wilson’s initial promise to recognise self-determination globally, “peoples” entitled to exercise self-determination became those ethnic groups that had mobilised national sentiment during the 19th century, under the Austro-Hungarian, German, Ottoman and Russian empires. Because of the area to which the principle was directed after the war, the understanding of sovereignty became rooted in the idea of the nation, and, *vice versa*, the nation became specifically defined in

¹⁰⁸ Ibid., 78.

¹⁰⁹ Mazzini, *A cosmopolitanism of nations: Giuseppe Mazzini’s writings on democracy, nation building, and international relations*. In their introduction, Recchia and Urbinati make the point that Mazzini’s works constitute the origins of what came to be known later as “liberal wilsonianism.”

¹¹⁰ Mill, *Considerations on Representative Government*, 57.

¹¹¹ Ibid., 284.

¹¹² Glanville, *Sovereignty and the Responsibility to Protect*, 2014, 86.

ethno-national terms. The contours of political equality within the new nation-states were thus delineated along the lines of ethnic affiliation, not just locally, but internationally.

Both “liberal nationalist” and ethnically restrictive conceptions presented here highlight that, since the rise of popular sovereignty, notions of political equality and equality of rights have lain at the heart of body politics’ formation and legitimacy. The several views discussed also reveal what could be called, historically, a perennial issue of contention: if a people has a right to fully express its political will and to determine itself, how is the people defined? Who is entitled to be part of the body politic and thereby enjoy political equality? Delineations of political communities and their membership criteria varied importantly in the views of 19th century authors. For German and Central European intellectuals, equality was defined exclusively, along kinship ties. Mazzini equated self-government to universal male suffrage. Mill, on the other hand, explicitly claimed that, although representative government was ideally the best form of political organisation, “the natural tendency of representative government as of modern civilisation (*wa*)s towards collective mediocrity.”¹¹³ For this reason, he went on, universal suffrage ought to be allocated to “those who can write, read and count arithmetically (...) and it would not be society to exclude him but his own laziness.”¹¹⁴ Moreover, both Mazzini and Mill expounded the then widely held view that not every people on the planet was anyway ready, or advanced enough, for self-government.¹¹⁵

Egalitarian understandings of self-government were reflected, in the thought of these and other nineteenth century intellectuals, by exclusive and hierarchical arguments. Internationally, hierarchies concerned who, on the planet, was deemed ready for self-government. In the domestic domain, the tension revolved around the idea of political equality in the body politic, and exclusive criteria of access to the body politic for members of internal societies. At the start of the twentieth century though, these arguments were disputed in a sudden and subversive manner. In 1913, writing his essay on *Marxism and the national question*, Joseph Stalin argued that national self-determination concerned *all* peoples on the planet, with no exceptions.¹¹⁶ If invoked by oppressed populations, self-determination would liberate them from the domination of imperial powers and subsequently allow them to join a

¹¹³ Mill, *Considerations on Representative Government*, 141.

¹¹⁴ *Ibid.*, 165.

¹¹⁵ Two works that came out the same year, are: Mazzini, *A cosmopolitanism of nations: Giuseppe Mazzini's writings on democracy, nation building, and international relations*; Bell, “John Stuart Mill on Colonies.”

¹¹⁶ Stalin, *Marxism and the National Question*.

centralised state. The idea was reformulated and internationalised a year later in what became the Leninist doctrine.¹¹⁷ As World War I was progressing, Woodrow Wilson famously adopted the phrase, establishing himself as, borrowing the expression from Erez Manela, “the champion of self-determination” internationally.¹¹⁸ This is where my thesis starts.

Politics of self-determination in the 20th century

As Arnulf Becker Lorca has recently remarked, whereas discussions on the nature and scope of self-determination are complex and provoke constant debate, it seems that the existing literature identifies the 20th century history of self-determination in a very linear way.¹¹⁹ After World War I, with its contradictions, the principle of national self-determination (though occasionally implying multinational unification) was directed to those territories at the borderlands of Europe, formerly under the authority of the Austro-Hungarian and Ottoman Empires. It thus became an organising principle of post-war international order, though for many still aspirational. We also know that the brutality with which practices of exclusion were undertaken domestically, in the name of self-determination, called into question the understanding of peoples in ethnic terms. Hence, the institutional setting within which self-determination was then transformed from a principle to a norm, and in which it was formalised in international law in 1945, bolstered the ideal of the ethnically blind polity. Several years later, self-determination became formally associated with human rights (art.1 ICCPR, ICESCR), as the institution of empire was delegitimised through decolonisation.¹²⁰ In turn, from 1960 the idea of self-determination came to be grounded on universal moral foundations in the name of equality and of its association with human rights.

While this is an important part of the story of self-determination and of the transformations in the international, numerous scholars have increasingly shown that hierarchical and imperial structures continue to bear relevance for the understanding of the contemporary liberal order. More precisely, whereas this is something that American IR scholarship had been

¹¹⁷ Lenin, *The Right of Nations to Self-Determination*.

¹¹⁸ Manela, *The Wilsonian Moment*, 2007, 17–19.

¹¹⁹ Lorca, “Petitioning the International,” 498.

¹²⁰ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, Chapter V.

highlighting for several years,¹²¹ there seems to be a resurgence of interest on the matter in interpretivist literature. For example, in investigating the nineteenth century, the English School, constructivism and intellectual history assess influences of hierarchical conceptions and practices on 20th century international relations.¹²² In sum, contemporary IR scholarship increasingly recognises that overall, “the world in which we live is largely the product of rise, competition, and fall of empires.”¹²³ Hence, if we are to fully comprehend the contemporary order, as Edward Keene suggests, we may “need to relate the new twentieth-century forms of international political and legal order to the late nineteenth and early twentieth-century forms that immediately preceded them.”¹²⁴

As to the tension that I reveal in this thesis, my argument is thus marked as one that is at home with this literature. Invoked to expand globally the model of the nation-state, self-determination, I contend, has concurrently involved exclusions and hierarchies, both domestically and internationally. This, once more, underlines that the making of the modern system of states has not been just a story of greater equality and inclusion. We are told that the global application of self-determination, along with decolonisation, led to the expansion of the model of the nation-state, replacing vertical logics of membership and identity with horizontal ones. New states were formed, they became members of international society, and this is where the story of its expansion ends. In this thesis, however, I want to show that this progressivist tale of equality sits uncomfortably with logics of hierarchy, that seem to accompany the history of self-determination throughout the twentieth century internationally but also domestically.

Certainly, self-determination has been recurrently invoked over the 19th and 20th century beyond imperial transitions as the cases of the Scots, Catalans, or Uighurs attest. However, in this thesis I want to investigate the idea of self-determination as the institutionalised principle of transition from empires (or hierarchical forms of authority) to nation-states. This,

¹²¹ See inter alia Doyle, *Empires*, 1986; Ikenberry, *Liberal Order and Imperial Ambition*; Kupchan, *The Vulnerability of Empire*, 1994; Lake, *Hierarchy in International Relations*, 2009; Ikenberry, *Liberal Order and Imperial Ambition*.

¹²² In addition to the works discussed in the previous chapter, see inter alia: Anghie, *Imperialism, Sovereignty and the Making of International Law*; Bell, “Ideologies of Empire,” 2013; Buzan and Lawson, “The Global Transformation”; Gong, *The Standard of “Civilization” in International Society*; Millennium Journal of International Studies’ issue on the standard of civilisation 42:3 (2014); Mazower, “An International Civilization?”; Zarakol, *After Defeat*.

¹²³ Bell, “Ideologies of Empire,” 2013, 536.

¹²⁴ Keene, *Beyond the Anarchical Society* Grotius, *Colonialism and Order in World Politics*, 2002, 125.

interestingly, is a principle that embodies dynamics of both continuity and change. While this might be very occasionally acknowledged, a historical engagement with these processes still needs to be written.

Before moving to the core of the thesis' argument, it seems relevant in a discussion on 20th century understandings and usages of self-determination to reflect upon what seems to have been a historical distinction between *national* self-determination and self-determination *tout court*. This distinction has been sometimes accompanied, in particular within scholarly work, by the propensity to view the former in collective, and the latter in individual terms. I would say, though, and this is the view that I endorse in this thesis, that this is a historically and politically contingent distinction. At the end of World War I, because self-determination was largely directed towards specific national groups, it was with the nation itself that the term came to be associated. Yet, *national* self-determination at the Paris Peace Conference also implied, in some cases, multi-national reunification. In the 1990s, debates on self-determination and its association with ethnic or national forms of self-identity emerged again. Several legal cases preceding the break-up of the Soviet Union and Yugoslavia seemed to indicate the predominance of an understanding of self-determination in territorial rather than national terms.¹²⁵ On the other hand, when the Bolsheviks used “national self-determination” in the 1910s, later borrowed by numerous struggles for liberation, the term referred explicitly to a tool for collective anti-imperial empowerment. Again, however, how the “nation” was defined remained a matter open for discussion. The endorsement of national self-determination, then, seems to be in this case more a matter of ideological tradition. Meanwhile, scholars in legal and political theory have recurrently employed the distinction to categorise self-determination into collective or individual terms. It seems to me that these categorisations can distract us from looking at how actors have deployed these claims, for what projects, and at what times.

The Argument Outlined

I argue in this thesis that twentieth century understandings and usages of the idea of self-determination point to the existence of a recurrent tension. This is a historical tension between the egalitarian aspirations of self-determination, on one hand, and the practices of hierarchy

¹²⁵ Cf. Lubicon Lake Band vs. Canada, in 1990.

associated with self-determination, on the other, that covers three different dimensions of world politics. Each level uncovers specific logics of power, both among and within states, but also in the way ideas settle and come to constitute certain forms of power.¹²⁶ Accordingly, in what follows, I detail each dimension, or level, of my argument. Before starting, I should note however that whereas for a matter of clarity I separate my claim into three levels, in historical practice these boundaries have not been as clear-cut as I present them.

Level 1: Self-determination as the standard of post-imperial membership in international society

Throughout the 20th century, IR scholarship tells us, self-determination has become the accepted standard for post-imperial statehood and membership in international society. Though this aspect has been overlooked in the study of IR, I suggest that just like any standard, self-determination has inevitably entailed correlative disciplining expectations. These, I suggest, have been international expectations as to what “good” domestic order ought to be within post-imperial states. They have been marked by a discourse about political equality of individuals and equality of rights as constitutive of the nation-state. However, they have also been at times more, at other times less, explicit and coherent, periodically fostering the recognition of certain claims over others. Moreover, whereas self-determination is largely imagined as the principle leading to sovereign equality within international society after breakdowns of imperial orders, by the very delineation of international expectations, the dominant narrative about equality within and among states appears to be compromised.

Saying that self-determination has been accompanied by expectations, however, needs further unpacking. More than just leading to the expansion of the model of the nation-state, self-determination has thereby also carried with it a bundle of ideas, values and norms. These have settled in specific ways, constituting forms of power by fixing meanings and delineating appropriate forms of identity and behaviour. This “normative package,” I suggest, has played a part in redefining, differently for each wave of 20th century state formation, legitimate statehood and membership within international society. In other words, rather than seeing self-determination as a “categorical right” –borrowing the phrase from Robert Jackson – that

¹²⁶ Whereas in this thesis I do not engage directly with conceptual questions related to power, I do acknowledge that power inequalities are likely to shape claims about self-determination, what are the claims that are recognised and both domestic and international order after statehood has been realised.

then leads inevitably to a “categorical sovereignty” defined, *inter alia*, by non-interference, I suggest that specific conceptions have been internationally attached to it, beyond recognition of statehood. The content of these expectations has varied at given times, reflective of broader shifts in the international environment and has occasionally carried explicit contradictions in the recognition of certain claims over others. Hence, first, in the international monitoring of self-determination, certain conditions have been imposed upon new, apparently equal, members of international society. Second, at times these expectations have fostered contradictory views.

To make sense of, and give more detailed form, to such expectations, I propose to break the idea of self-determination into three normative components. These are, to begin with, the identification of the “people” entitled to self-determination - perhaps the most obvious of the three, given its prominence within international discussions. Second, there are the “rights” associated with self-determination. I refer here more to the entitlements associated with self-determination internationally than to specific claims made by peoples - even if they might be mutually constitutive. Third, there are the “responsibilities” correlative to such rights that, if self-determination is realised, have direct implications for the nature of statehood. The identification of these three immanent ingredients stems from my observation that for each wave of state formation that I study, debates over self-determination by both practitioners and theorists have revolved – albeit not exclusively - around three recurrent themes: Who can enjoy self-determination? What does it signify? What will be the consequences of realising it?

For each wave of expansion of international society answers have varied and have taken different forms. However, I see people, rights, and responsibilities as self-determination’s three immanent ingredients for each wave of expansion of international society, highlighting the various levels at which international expectations attached to self-determination have operated. Following from my historical enquiry, the following table charts the various criteria that I have found to delineate international expectations attached to self-determination for each case I study:

Waves of state formation -- self-determination's "components"	<i>Post-World War I</i>	<i>Post-World War II Decolonisation</i>	<i>Post-Cold War and Break-up of Yugoslavia</i>
PEOPLE	Ethnic / Racial	Ethnically and racially blind	Ambiguous: <u>Norm</u> : ethnically and racially blind <u>International Practice</u> : ethnic
RIGHTS	Self-government/ recognition of ethnic diversity	Self-government (independence) /equal treatment	Self-government through referendum (secession) / recognition / equal treatment
RESPONSIBILITIES	Political equality and equality of rights / democratic rule/ recognition of diversity / protection of minorities	Equality (political, of rights)/ inclusion/ democratic rule/ protection of human rights	Equality / inclusion/ Protection of human rights / democratic "governance"/ recognition of diversity
<i>Coherence in content of "components"</i>	<i>No: both equality and hierarchy upheld</i>	<i>Ambiguous: Yes: in components No: tension with other norms and practices</i>	<i>No: both equality and hierarchy upheld</i>

For each wave of state formation that I investigate in my historical chapters, these expectations and categories will help in systematising international responses. It is important to note, though, that in international practice these have not always been as clearly outlined as I indicate in the table.

Moreover, as the last category of the table highlights, self-determination's components have also been in conflict with each other, or with other norms. For example, as we will see, after World War I self-determination was formally associated with political equality and equality of rights, while permitting hierarchies in recognition of minorities and national groups. A similar contradiction has characterised the context of the 1990s Balkans. In turn, whereas the decolonisation period seems to represent a historical parenthesis because of the universalisation of self-determination, we will see that international expectations were also attached to the allegedly neutral principle of *uti possidetis*. In 1919, 1960 and over the 1990s, self-determination was, each time, redefined as new members of international society acquired (equal) membership within it. However, since expectations touched upon the

redefinition of domestic orders, variation from these expectations in domestic politics of self-determination, I shall argue, has often been perceived as a (mis)interpretation of the concept.

It should be noted that I arrived inductively at the identification of the three components of self-determination for each international debate surrounding 20th century waves of state formation. Following my research on international discussions for each 20th century wave, I have distinguished the existence of commonalities. These were commonalities between how international actors at the Paris Peace Conference, at the United Nations, and during the break-up of Yugoslavia (in particular in the opinions of the EC Committee) understood and delineated self-determination as the standard of membership within international society. Each time, the “qualitative” substance of self-determination was redefined, to satisfy quite different political projects. However, debates on self-determination as the principle of transition from empires (or multinational federations) to nation-states repeatedly converged around similar matters, or “signifiers.” I was thus able to identify the components of self-determination, their substance, and to uncover logics of continuity and change over the twentieth century.

The analytical separation of self-determination into its three components is thus the result of an inductive process, completed by empirical research. It has allowed me to better comprehend institutional debates on the principle over time. This “design” is methodologically fruitful, inasmuch as it has helped me to develop both analytical clarity and conceptual inclusiveness, to make sense of international debates surrounding 20th century waves of state formation. I therefore do not seek to generalise over other claims or cases, at least in this thesis, beyond 20th century moments of international expansion. However, I should add that it might not be beyond the bounds of possibility that these or similar dimensions can be related to discussions on the entry of states into the 19th century family of nations.¹²⁷ Hence, while post-imperial states were allegedly formed in the name of an egalitarian principle, specific international actors, at given times, concurrently used the same principle to delineate, in a hierarchical fashion, the standard of legitimate statehood and membership in international society.

¹²⁷ Unfortunately, because of time constraints, I was not able to investigate in detail this hypothesis but I hope to do so in further research.

Level 2: Domestic politics of self-determination and state formation

The tension between egalitarian aspirations and practices of hierarchy has manifested itself at the domestic level of the newly “self-determined” states, as political élites delineated the boundaries of national political communities. There always needs to be a demarcation as to who can be part of a political community and who cannot. The unexpected feature of exclusions associated with 20th century waves of state formation that I study, however, lay in the institutionalised and systematic way in which these took place - often as I will argue, though not always, along older lines of imperial politics of recognition. Casting doubt on the assumption that, with transitions from empires to nation-states, hierarchy was simply replaced by equality, I suggest that within many post-imperial states, what has endured instead was an uneven distribution of political rights. What I term “hierarchical membership” - that is either old categories, or hierarchies inherited from previous imperial politics of recognition on which the new states were formed - has sat uncomfortably with egalitarian aspirations of self-determination (be they to a greater or lesser degree exclusively defined.)

In other words, post-independence/liberation experiences of self-determination throughout the twentieth century do not conform to a linear tale of equality and inclusion. Instead, it seems that institutionalised hierarchy has been the norm during the politics of state formation of many post-imperial states. After World War I, hierarchical membership continued in the Balkans after empire, with the Minority Treaties further fostering unequal recognitions of certain groups over others. With post-war decolonisation, self-determination came to be associated to human rights. However, “hierarchical membership” persisted in many post-colonial states, in particular former British colonies, along, I suggest, the lines of former imperial politics of recognition. Then, in 1990, international society discovered with surprise the persistence of “pockets of empire” in Yugoslavia, in the area where, in 1919, the Paris peacemakers had directed self-determination to guarantee the transition from empires to nation-states. Just when the OSCE and the European Community (EC) were upholding explicitly liberal ideals for Europe, hierarchies and ethnicity in the name of self-determination re-emerged internationally.

The idea of hierarchical membership implies a prioritisation of individuals considered “more similar” to an idea of the corporate identity of a newly formed state. Such identity often mirrors previous imperial politics of recognition in which certain groups had greater

recognition or rights than others. In turn, I suggest, the insufficient allocation of certain rights allows for the gradual exclusion of other groups (individuals that self-identify or are publicly identified with other groups). These exclusions are represented by the loss of political rights or by the loss of other rights that impede the full exercise of political rights.

Throughout my research I was able to identify the persistence of hierarchical membership, focusing on both behavioural and discursive practices of political actors within the new states. I have coined the term “hierarchical membership” to capture a set of various practices and conceptions, the expression of which is different in each case. The rights that I take into account though, are similar in each context. These are political and other cognate rights that allow individual access to membership within the body politic. Hence, whereas these are rights exercised individually, in post-imperial politics of self-determination and state formation they are largely allocated (or not) on collective grounds.¹²⁸

Writing specifically about the Russian Empire, Jane Burbank coins the term “imperial rights regime” to define the “regime of differentiated, alienable, but nonetheless legal and meaningful rights”, defining its notion of citizenship.¹²⁹ Burbank, explains that, “‘difference’ was a foundation of empire’s existence, essential to the process of defining, allocating, and manipulating rights.”¹³⁰ Importantly for my argument, she also hints at the idea that such imperial practices were directly transposed into the Soviet rights regime, though she only briefly investigates such legacies.¹³¹ So, although the Bolshevik Revolution took place in the name of self-determination, hierarchical differentiation, she suggests, persisted.

In some sense then my argument echoes her proposition, although I focus specifically on post-imperial waves of state formation disciplined internationally in the name of self-determination. The internationally held view that it is through the will of the “people” (externally defined) that independence can be achieved, or a government constituted, obscures, perhaps not unintentionally, the recognition that the way the political community is delineated matters for how rights are allocated. Hence, old membership categories inherited from empire used to justify domestic hierarchies within new, “self-determined” states, have

¹²⁸ In particular during the 1990s, these have translated into discussions about group rights.

¹²⁹ Burbank, “An Imperial Rights Regime,” 397–398.

¹³⁰ *Ibid.*, 403.

¹³¹ *Ibid.*, 397.

been in contrast with international expectations attached to international redefinitions of self-determination, increasingly defined by quite exclusive liberal values and norms.

Level 3: illegitimate practices and international hierarchies

The deeper implication of all this, which constitutes the third level of my argument, is that no matter how flawed, international expectations about equality within new, self-determined states have rarely (if ever) been met. Whereas post-imperial states were allegedly formed in the name of an egalitarian, liberationist principle, the same principle was concurrently used to delineate the standard of legitimate statehood and membership in international society. As this standard was not met by newly “self-determined people,” actors within international society have used self-determination to justify more, or less, overt hierarchies of status (hierarchies that resemble older, apparently discredited, divisions) *within* international society. These have been hierarchies between old and new post-imperial states in international society; between more civilised or less civilised states; between states that allegedly are defined by equality and inclusion and those that witness hierarchical membership in the politics of self-determination. Hence, whereas internationally norms have become delineated increasingly in liberal terms, the old practice of creating hierarchies of status has not disappeared.

More than that, though, I suggest that through the expectations attached to it, the idea of self-determination has operated as an elusive token of legitimate behaviour and identity throughout the twentieth century as a whole. The idea of self-determination has worked as a constant reminder from more “mature” states to newly formed ones that their status as sovereign equals is dependent upon meeting international expectations about appropriate state behaviour. The degree of compliance with or deviance from expectations attached to self-determination has thus left open, in some sense, a “barbarian option.”¹³² The demarcation line between civilised and barbarian has, however, been replaced by designations of democratic/liberal, less democratic/liberal and undemocratic/illiberal behaviours.

Although as from decolonisation formal hierarchies have been dismissed, the concept of stratification as proposed by Edward Keene might be a useful tool to comprehend the role that self-determination has had in 20th century international society. Writing on nineteenth century

¹³² I borrow the phrase from Zhang, “The Standard of ‘Civilisation’ Redux,” 2014, 688.

international relations, Keene suggests that, “we should replace the idea of expansion with stratification as our master concept, and so change the central question from ‘who was a member of international society’ to ‘who was where within international society?’”¹³³ I believe that a similar move can be undertaken to comprehend in a more encompassing way the role that self-determination has had in world politics. Self-determination in fact has not only established who could be part of international society and who could not. As I will show in the next chapters, expectations attached to it - and whether these were respected or not - have also delineated, at given times, who could be a more legitimate – and thus equal - member *within it*.

It is here that the role played by the notion of international disciplining in this thesis takes full meaning. My understanding of international disciplining, or disciplining, is not distant from a dictionary definition. The Oxford Dictionary in fact defines “discipline,” as a noun, as “behaviour in accord with rules of conduct; behaviour and order maintained by training and control,” “a system of rules of conduct.” As a verb, “to discipline” is said to signify “to bring to a state of order and obedience,” but also to “train (someone) to obey rules or a code of behaviour, using punishment to correct disobedience”¹³⁴ Both as a verb and as a noun, “discipline” implies a two-sided process. On the one hand, it concerns agents who exercise a certain type of control by setting up rules and norms of appropriate behaviour and identity; on the other hand, it relates to agents who are subjected to this type of control and who, to a greater or lesser degree, comply with it. In other words, it touches upon given agents setting up rules, upon them penalising those who do not conform to such norms. Sometimes rigid standards are applied, sometimes flexible standards operate. Conversely, it also concerns other agents conforming, or not, to a certain idea of what order ought to be. Of course, in practice there exist different degrees of compliance to values, norms or rules and, therefore, I would add, of ensuing reward or stigmatisation.

Hence, when I use the term ‘international disciplining’, I refer to the explicit, coherent and defined international expectations (attached to self-determination) that more powerful actors within international society use to delineate rightful state conduct and identity. In turn, on the side of those subjected to such values and norms, disciplining implies a greater or lesser

¹³³ Keene, “The Standard of ‘Civilisation’, the Expansion Thesis and the 19th-Century International Social Space,” 652.

¹³⁴ “Discipline,” Oxford Dictionary of English, <http://www.oxforddictionaries.com/> (18/02/2015.)

degree of conformity to such expectations. If these expectations intended to guarantee order are not, or not sufficiently, respected, then the notion of disciplining implies a degree of penalisation, or stigmatisation, in order to either correct or control. Put differently, over the 20th century new, “self-determined states” that have not conformed, or at least not entirely, to international expectations (*level 1 and 2 of the argument*) have been deemed less equal than, for instance, older, and “better behaved” members of international society (*level 3*). For each wave of state formation, the degree of coherence and explicitness of expectations that international actors have attached to the “standard” of self-determination has varied, as much as the implications of these expectations, beyond the realisation of statehood.

With the end of World War I, the Minority Treaties came to substantiate international disciplining. Whereas the Peace Makers did not conceive any mechanism of enforcement attached to the treaties, I shall argue that these were used as loose standards upon which judgements as to the state of advancement of the new states would be articulated. In the decolonisation phase, UN resolutions on self-determination and human rights were instead used as standards against which the behaviour of new states would be confronted. In the Cold War years, on the other hand, UN practice was largely characterised by what Gerry Simpson has qualified as an “agnosticism about moral truth.”¹³⁵ This is reflected, for example, in interpretations of international law that did not make judgements about the internal politics of states, favouring instead formal sovereign equality. However, whereas supervisory regimes retreated, international disciplining towards newly independent states took different forms, such as requirements from international financial institutions to adapt (and “develop”) towards a capitalist economy, or arguments about the (lack of) respect of human rights. *In fine*, with the end of the Cold War, a group of mostly western actors became actively involved in monitoring the dissolution of Yugoslavia. This happened through the formulation of explicit international expectations by the EC Committee, which were then enforced via strong supervisory regimes, as in Bosnia and Kosovo, but also through the long process of Europeanisation that affected Croatia.

The proposition that the role of supervisory regimes in the post-Cold War Balkans can be equated with hierarchical or civilisational practices is not new. Both William Bain and

¹³⁵ Simpson, *Great Powers and Outlaw States*, 2004, 77–78.

Dominik Zaum have made the argument before.¹³⁶ However, for the types of arguments made, both perspectives lack an engagement with the domestic level, looking instead at Kosovo and Bosnia primarily through the prism of the supervisory regimes.

Moreover, the argument that I advance, in particular with regards to the former Yugoslavia, disputes that advanced by Jennifer Jackson Preece. In 1999, Jackson Preece made the point that, although the condition of domestic minorities is an international concern, “any suggestion that recent minority rights initiatives disclose a new found willingness on the part of international organisations to intervene in the affairs of sovereign states so as to promote domestic peace, order and good government is simply not substantiated by the evidence.”¹³⁷ Jackson Preece grounds her position on the claim that “in the terminology of international law and practice, the terms “failure” and “failed states” are nowhere to be found.”¹³⁸ Disputing this statement, I will show instead that in particular *after* 1999 in Kosovo, and to some extent before that in Bosnia, international supervisory regimes inaugurated policies, for instance, on minority treatment as part of a legitimate statehood “package.” The self-determination of Bosnia and Kosovo would be fully recognised and statehood deemed legitimate if such policies were respected (though it remains unclear how the degree of domestic compliance to international expectations would be measured). Judgements have thus been recurrently articulated and used as leverage tools by international authorities. These have not necessarily been explicit judgements about “failed states” according to international law. Instead, they have taken the form of evasive statements on the advancement of political communities and on what “good domestic order” should be within new states. Put simply, there is a difference between the qualifying of a state or of its practices as illegitimate (or worse, failed – a term that, unsurprisingly many lawyers are keen to avoid). Mine is thus not an argument about legal hierarchies, but rather one about moral and political categories, which may or may not have an impact on the former.

¹³⁶ Bain, *Between Anarchy and Society*, 2003; Zaum, *The Sovereignty Paradox*, 2007.

¹³⁷ Jackson Preece, “Self-Determination, Minority Rights and Failed States” This is a conference paper that does not bear page references.

¹³⁸ Ibid.

For matters of clarity, the historical premises of this claim are illustrated below:

	Post-World War I	Post- World War II decolonisation	Post-Cold War
Tools of international disciplining	Paris Peace Conference Minority Treaties	Res. 1514 and 1541	EC Committee opinions, UN/ OSCE / EU tools
International Disciplining	International Supervisory Regime	Strong rule: <i>uti possidetis</i> / No Supervisory Regime	Strong International Supervisory Regime

Before concluding, I would like to restate that over recent years logics of hierarchy and equality have increasingly attracted the attention of IR scholars. The contribution of my work to this body of scholarship is twofold. In shedding light on the ambiguous character of self-determination in twentieth century world politics, my argument joins “domestic and international structures and processes as two faces of a single, global social order.”¹³⁹ In turn, the ontological shift towards a holistic approach helps engagement, I believe, in a more encompassing discussion of legitimate statehood after empire, and of membership within international society. It does so by exposing neglected elements of the story of the expansion, largely dismissed from the study of IR as belonging to the domestic realm. Invoked to universalise the model of the nation-state, the idea of self-determination, as this thesis underlines, has concurrently involved exclusions and hierarchies, domestically and internationally. I follow Jane Burbank and Frederick Cooper in their claim that, “if we can avoid thinking of history as an inexorable transition from empire to nation-state, then perhaps we can think about the future more expansively.”¹⁴⁰ The challenge, then, is to use historical enquiry accordingly.

Conclusion

The idea of self-determination, I have argued, embodies a historical tension. This is a tension between the egalitarian aspirations of self-determination and the practices of hierarchy attached to it. I have shown that though old, this tension has been most evident during twentieth century waves of expansion of international society, and has manifested itself at three different levels. First, it has been embodied in the disciplining of international society,

¹³⁹ Price and Reus-Smit, “Dangerous Liaisons?”, 269

¹⁴⁰ Burbank and Cooper, “The Empire Effect,” 257.

when self-determination was redefined, for each wave of state formation, as the standard of legitimate membership and statehood. More precisely, I have argued that behind each international acknowledgement of self-determination have lain specific expectations as to what “good” domestic order ought to be. To make sense of and give content to such expectations, I have proposed to break the idea of self-determination into what I see are its three normative components: people, rights and responsibilities. Second, I have argued, the tension has manifested itself at the domestic level of the newly “self-determined” states, as political élites delineated the boundaries of national political communities. I have suggested that in numerous post-imperial states the uneven distribution of rights reflecting former imperial politics of recognition, or categories, has endured. Third, and as an implication of all this, I have suggested that self-determination has been used internationally to justify, in a manner not unlike old civilisational ideas, moral and political stratifications of status. Through an examination of archival research and secondary material, the next chapters set out to explore these dimensions.

PART ONE

Self-Determination, Minority Treaties and the Constitution of New States at the Paris Peace Conference

International Relations scholarship tends to agree that with the Paris Peace Conference self-determination became the accepted standard for membership in international society. This scholarship also agrees that, despite President Wilson's earlier promise to grant self-determination to colonial peoples through the "benevolent" help of colonial powers, it soon became obvious that victorious colonial powers would not renounce their overseas territories. In turn, in the name of the "sacred trust of civilisation," territories formerly under the rule of defeated powers were put under the tutelage of the League of Nations, through the Mandate System.¹⁴¹ Self-determination was thus directed to those territories at the borderlands of Europe, formerly under the authority of the Austro-Hungarian and Ottoman Empires. Because of the area to which the principle was directed, self-determination took on an explicit ethnic connotation already attached to it both by the Bolsheviks and Wilson. Its ethnic tone, we are told, led to the perpetration of discriminatory practices in the new, "self-determined" states. However, since these practices are largely understood as being the result of domestic politics of state construction after World War I, IR scholarship often tends to dismiss them from its study.¹⁴² After all, what would domestic behaviour have to tell us about the expansion of international society after World War I?

In this chapter and the next, I want to suggest that what happened *within* the newly formed states, after statehood was recognised, constitutes a fundamental and yet overlooked part of the story of the expansion of international society. To make sense of the expansion, IR scholars have largely directed their attention to the arguments used by the Allied and Associated Powers, to maintain overseas colonies and bypass the principle of self-determination. Whereas these are fundamental aspects of the story, they also represent just one portion of it. In Paris, self-determination was granted to those people who had mobilised nationalist sentiment during the nineteenth century, under the Austro-Hungarian and Ottoman empires. It was also explicitly tied to international expectations about what "good" domestic

¹⁴¹ Art.22, League of Nations (LoN) Covenant

¹⁴² See, as one exception that confirms the rule Rae, *State Identities and the Homogenisation of Peoples*, 2002.

order should be, after statehood was recognised. These expectations were framed in terms of rights and responsibilities. Recognition of new states as equal members of the “family of nations” was made conditional upon the ratification of the so-called Minority Treaties. Though diverse in some respects, these treaties each delineated internationally how national authorities should define and treat internal societies and groups. For this very reason, the widely shared assumption in IR (except of course for liberal theories), that the internal nature of new states is not relevant to an understanding of the emergence of a system based on externally independent states, is, I believe, problematic. At least in principle, through the development and application of self-determination, the treatment of domestic societies became a matter of wide international concern. Although it was not the first time that the treatment of domestic populations had been internationally debated, the end of World War I was instrumental in redefining explicitly legitimate statehood and membership in international society in these terms. For this reason in particular, this period needs to be seriously taken into account.

Authors increasingly suggest that the differentiated allocation of self-determination and the establishment of Mandates indicate that the Peacemakers, and Wilson in particular, might have been more closely aligned to Lorimer’s 19th century hierarchies of civilisation than to what many have long described as the US president’s Kantian idealism.¹⁴³ Similarly, understanding the meaning of self-determination as delineated by experts of more “mature” states in the Minority Treaties helps to reveal the contradictions that characterised the post-World War I social and political order. While the treaties upheld political equality and equality of rights within the polity, they promoted hierarchical recognition of national and ethnic groups, while recognising a norm of non-interference: by their very role they shaped “domestic jurisdiction.”¹⁴⁴ As we will see, with their manifold inconsistencies, the Minority Treaties came to outline the contours of appropriate state conduct, giving form to self-determination’s defining components: peoples, rights and responsibilities. The way domestic societies came to be delineated and treated within many newly formed states, however, did not follow international expectations. Post-imperial hierarchical membership was in contrast

¹⁴³ This unorthodox view is supported, *inter alia* by Coogan, “Wilsonian Diplomacy in War and Peace,” 74–75; Keene, *Beyond the Anarchical Society* Grotius, Colonialism and Order in World Politics, 2002, 124–126.

¹⁴⁴ Both equality and “domestic jurisdiction” are terms present in the templates of all the Minority Treaties. As Glanville has noted, the latter emerges as a shared term during the conference. Glanville, *Sovereignty and the Responsibility to Protect*, 2014, 91.

with the international conceptions of equality that, despite their obvious flaws, were embedded in the idea of self-determination upheld in Paris.

The case of the Kingdom of Serbs, Croats and Slovenes is emblematic. Formed on the eve of the Paris Peace Conference on the basis of citizens' equality, the Kingdom was soon after recognised by the Allied and Associated Powers.¹⁴⁵ This newly formed state was the object of lengthy discussions by the Peace Conference Committee on New States and the Protection of National Minorities, which was in charge of drafting Minority Treaties. Because of its ethnic mosaic of allegiances, handling the relationship between majorities and minorities in the Kingdom of Yugoslavia was a delicate task for the International Committee.¹⁴⁶ Only some months after the Kingdom's creation, the Committee realised that national authorities had inaugurated practices of hierarchical membership favouring specific population groups at the expense of others. Although, as I will stress, these were justified in the name of international principles, hierarchical membership showed that international expectations attached to self-determination had not been met.

Throughout the 1920s, the League of Nations would constantly remind Yugoslavia and other post-imperial states that their status as sovereign equals was dependent upon meeting international expectations about appropriate state behaviour. As we will see, such reminders took the form of ambiguous statements as to the possibility of relegating the status of the new states from equal, to somehow less equal. In a very limited number of circumstances, the League even cautioned post-imperial states that it might take direct measures to redress domestic conduct. That more "mature" states could interfere in the domestic jurisdiction of states viewed as less experienced indicates, I believe, that hierarchies of status between new and old states were a *leitmotiv* at the League. I suggest that these were along the lines of what in many respects were old, hierarchical, assumptions about international social order. In a way not dissimilar to civilisational ideas, self-determination and the Minority Treaties can be seen as moral high grounds, used to justify informal hierarchies of status, this time *within* international society. An understanding of the role of self-determination before but also after

¹⁴⁵ Declaration of King Alexander Ist on 24th December 1918 in front of the new ministers. 44th meeting of the Committee on new States. August 3rd, 1919. S336 League of Nations Archives (LNA), Geneva.

¹⁴⁶ "Yugoslav" means south Slav in Serbo-Croatian (Yugoslavia is the land of the South Slavs). The term "Kingdom of Yugoslavia" was officially coined in 1928 and it remained until then the Kingdom of Serbs, Croats and Slovenes. I will occasionally refer to the Kingdom of Yugoslavia in its etymological sense to refer to the state formed on the eve of the peace conference.

statehood was recognised allows us to shift from the perennial question of “who could be granted self-determination, and thus become a member of international society?” to the less obvious one, “who was where within international society of the time?”¹⁴⁷ This might give us a richer understanding of the post-World War I expansion of international society.

This first part of the chapter is concerned with the period spanning the years 1918 to 1923. It starts with Wilson's Fourteen Points and the formation of the first Yugoslavia, and ends in 1923, with the ratification of the last Minority Treaty. A move beyond the strict period of the Paris Peace Conference (1919-1920) is helpful for two reasons. First, it allows us to refine our understanding of the international supervisory system on minority treatment, established at the conference and later executed by the League of Nations. Second, it offers an opportunity to explore the Yugoslavian rights regime and reflect upon its implications domestically and internationally. To illustrate my claims, this first part is divided into two chapters. This first chapter is concerned specifically with discussions and decisions taken in Paris. It is divided into two main sections. It begins with a critical account of how, from being an idea with multiple meanings attached to it, self-determination became in Paris the foundational principle for legitimate statehood after empire. The discussion then turns to its *ad hoc* application and to how the codification of the Minority Treaties delineated post-war standards of *civilised* statehood and membership in international society. The next chapter looks at the implications that these standards had for new states' existence and acceptance as rightful members of international society, once statehood was recognised.

The Rise of International Politics of Self-Determination: Change or Continuity?

As the war progressed, Wilson increasingly upheld self-determination as the “moral principle essential to the achievement of justice and world order”.¹⁴⁸ What became the US president's *leitmotiv*, however, was neither a completely new idea nor a self-referential value about the organisation of international relations. As we have seen in the previous chapter, throughout the nineteenth century political thinkers evoked self-determination and national leaders used it to justify, albeit occasionally, claims to independence. That the intellectual origins of self-determination were deep-rooted gave legitimacy both to the idea and to the man who was

¹⁴⁷ The case is made for the importance of this second question in Keene, “The Standard of ‘Civilisation’, the Expansion Thesis and the 19th-Century International Social Space,” 652.

¹⁴⁸ Claude, *National Minorities an International Problem*, 11.

pronouncing it. To this, we should add that until the end of the war, no attempt was made by either Wilson or any representative of the Allied and Associated Powers to delimit the meaning and scope of self-determination. Until the start of the Paris Peace Conference its great international appeal was attached, I contend, to the vagueness of its formulation.

However, as soon as the peace conference began in January 1919, the *explosive* potential of self-determination became discernable to all. The idea of self-determination implied a redefinition of the bond between domestic societies and the institution of the state through the exercise of popular sovereignty. While in earlier periods the realisation of the consent of the governed rested on the discretion of each state, Wilson had turned it into the precondition for post-war global order. Through successive invocations of the concept, Wilson expanded its foundations and its scope. In so doing, Erez Manela has shown, he also fostered hope for independence among peoples living under imperial rule.¹⁴⁹ The moment the conference started, however, victorious colonial powers made it very clear that for no reason would they give up their colonial possessions. Colonial hierarchies were reiterated through the establishment of the Mandates System, guaranteed by the League of Nations. Self-determination was thus narrowed down in its scope and used, *ad hoc*, in the redefinition of Central and South-Eastern European borders. Self-determination thus grew to be regarded as hypocritical: the principle for post-imperial statehood and membership in international society, while remaining for many no more than aspirational.

The emergence of self-determination as a core principle of order after World War One needs to be relocated in the specific historical context in which it took shape. Despite the rhetoric of change surrounding the rise of international politics of self-determination, old ideas and practices did not just disappear. In spite of its revolutionary potential, self-determination was used to perpetuate international hierarchies and meet the interests of European and colonial powers. Accordingly, I begin by discussing the idea of self-determination before the beginning of the conference, stressing the multiple meanings attached to it. Then, I examine how in Paris self-determination came to be a principle of world order, yet limited in its application.

¹⁴⁹ Manela, *The Wilsonian Moment*, 2007, 24–37.

We have already said that the origins of self-determination as a political principle can be traced back intellectually to the writings of Locke and Rousseau and in practice, to the American Declaration of Independence (1776) and the French Revolution (1789).¹⁵¹ These events rethought the bond between the state and domestic societies. In France, both 1789 and 1793 Declarations of the Rights of Man and of Citizen implied that people were no longer to be treated as the objects of the monarch and that the government was to be chosen by its people and to be responsible to them.¹⁵² These documents embodied democratic and egalitarian ideals, but they bore little relevance in post-revolutionary France.¹⁵³ Depending more on the goodwill of state authorities, popular sovereignty at the heart of self-determination was not a shared international standard. Possibly due to its revolutionary appeal, throughout the 19th century self-determination increasingly took shape as an intellectual object of study and as a slogan for political mobilisation. Mikulas Fabry has shown that, although the term was not explicitly uttered, there was a tie between state recognition and self-determination in 19th century Latin American secessions.¹⁵⁴ More famously, at the same time self-determination was hailed by Giuseppe Mazzini for the unification of Italy, and by national groups mobilising under the Austro-Hungarian, German, Ottoman and Russian empires.

It was not until the start of the 20th century, though, that self-determination gained a broader international scope. In 1913, Josef Stalin wrote about the “principle of national self-determination,” later promoted internationally by Lenin.¹⁵⁵ Both Stalin and Lenin portrayed self-determination as an anti-imperialist instrument that would liberate oppressed collectivities and allow them to choose freely their own destiny. The principle as formulated by the Bolsheviks had a radically new and subversive connotation: it concerned *all* peoples, all over the world, with no exceptions. This included marginalised populations from the European Empires and colonial territories. Possibly because of the context in which these

¹⁵⁰ I borrow the expression from Manela, *The Wilsonian Moment*, 2007.

¹⁵¹ I use here “political”, to contrast self-determination as understood by Kant and Jacobi. For them self-determination, or *selbestimmung*, was the means to achieve individual freedom.

¹⁵² See in particular: articles III, VI, XI, XII of the Declaration of 1789 and articles XXV, XXVI, XXVII, XXVIII, XXIX of the Declaration of 1793.

¹⁵³ Cassese, *Self-Determination of Peoples*, 11–13.

¹⁵⁴ Fabry, *Recognizing States*, Chapter 2.

¹⁵⁵ Stalin, *Marxism and the National Question*.

ideas were developed, namely tsarist Russia, self-determination corresponded for the Bolsheviks to a right to secession. Invoked by oppressed populations, it would liberate them from the domination of imperial powers and, subsequently, allow them to join a centralised and bigger state. How, in practice, this would happen, remained unclear. A major ambiguity was inherent to the process of self-determination as formulated by the Bolsheviks. It did not reconcile centralism with the autonomy of self-determined nations and this, we know, would later translate into practical problems.¹⁵⁶ At the start of the war, these practical matters were not of great concern. It was rather self-determination's subversive potential that preoccupied imperial authorities.

The principle of self-determination as invoked by Wilson appears to be very different from the Bolshevik's understanding of it. When Wilson initially defined self-determination as the principle leading to international peace and justice, he had not really clarified ideological and political differences. On the contrary, Wilson adopted a rhetoric echoing that used by Lenin and nationalist leaders, speaking in the name of "oppressed" people.¹⁵⁷ At the same historical moment, this same idea, self-determination, acquired different, multiple, meanings according to who was pronouncing it. This discursive ambiguity, I suggest, helped to transform self-determination from an idea into an international principle. Crucially, the president of a world power was speaking in the name of marginalised populations.¹⁵⁸ At the initial stages of this promotion of self-determination, Wilson's audience was made up both of European states and populations living under imperial rules. As described by Manela, the confusion between the socialist rhetoric and the liberal reformist one marked the start of an efficacious formula.¹⁵⁹ By the end of the war, Wilson had become for many the "prophet" of self-determination.

As the war progressed, differences became evident. In addition to clearly demarcated ideological discordances, these also concerned the means used to achieve self-determination. Lenin used self-determination as a revolutionary motto. Wilson saw it as the peaceful means to achieve justice. Moreover, the Bolsheviks called self-determination an anti-imperialist

¹⁵⁶ Stiks, *A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States*, 81. Later on, in Socialist Yugoslavia, Tito and his government put in place a solution to the problem through federalism.

¹⁵⁷ For a study on the place of wilsonian self-determination on the national consciousness of colonial peoples see Manela, *The Wilsonian Moment*, 2007.

¹⁵⁸ It is also important to note that after the development of the Monroe Doctrine, Wilson's concern for a world-wide issues was also quite novel.

¹⁵⁹ Manela, *The Wilsonian Moment*, 2007, 39.

principle to be used by oppressed peoples. Wilson's position turned out to be very different. When words turned to practice and the war started to come to an end, the President could not continue to speak both to the Great Powers and to the "oppressed" peoples. After all, by entering the war in 1917, the American president had first and foremost started off as the spokesman of the Allied and Associated Powers.

As a scholar, Wilson's intellectual background was rooted in liberal democratic theory. His admiration for Kant's writings is widely reported.¹⁶⁰ Writing specifically on self-determination, Margaret Macmillan has suggested that Wilson had an idealist conception of its scope and application - that he was a liberal thinker who believed in the possibility of bringing together the will of the peoples with concerns about peace and justice.¹⁶¹ How peace and justice were conceived is a matter that Macmillan does not scrutinise. This approach, however, dismisses Wilson's background as a politician. As indicated by Edward Keene, "in most respects he and the other architects of the League system were operating with a world-view that was broadly similar to that which had defined pre-1914 ideas about international order."¹⁶² In other words, Wilson's ideas should be put back into the context in which they emerged: that of old hierarchical views about domestic and international order. These were merely obscured in the years of the war, when Wilson came to be viewed as the "champion" of self-determination.¹⁶³

Wilson did not explicitly mention the principle of self-determination in his Fourteen Points before the US Congress on 18 January 1918. In fact, he did not mention it until his less famous discourse of February 1918, called the Four Points. In it, he defined self-determination as an "imperative principle for action".¹⁶⁴ The Fourteen Points can, however, be regarded as an embodiment of the US President's equivocal use of self-determination and contradictory conceptions of world order. For example, in his fifth point Wilson evoked the idea that colonised peoples could express their voice in relation to the organisation of the governments they lived under. Yet nowhere did he mention how this would eventually take place. Points nine and eleven stated that it was only for Italy, Montenegro, Rumania and

¹⁶⁰ Cobban, *National Self-Determination*.; MacMillan, *Peacemakers Six Months That Changed the World*.; Manela, *The Wilsonian Moment*, 2007.; Weitz, "From the Vienna to the Paris System."

¹⁶¹ MacMillan, *Peacemakers Six Months That Changed the World*.

¹⁶² Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002, 125.

¹⁶³ Manela, *The Wilsonian Moment*, 2007, 17-19.

¹⁶⁴ Quoted in Cobban, *National Self-Determination*, 4.

Serbia, that the readjustment of borders should take place according to “clearly defined lines of nationality,” leaving to one side other national and territorial claims. Points eleven and twelve related to the autonomous development of peoples under the Ottoman and Austro-Hungarian Empires. Which peoples and which autonomy though were not mentioned. Then more specifically, Wilson pledged the constitution of Montenegro, Rumania, Serbia and Poland as sovereign states. While Wilson’s rationale for the constitution as sovereign states of the first three related to their existence as such before the war, the American President did not provide any justification as to why “Polish populations” (point thirteen) could have a state while other peoples formerly under imperial rule in Europe, also seeking self-determination, could not.¹⁶⁵

Wilson’s condensed speech had a strong international echo despite - or perhaps because of - its ambiguities. It formed the inspiration for the programme that could lead the world to order and peace in a context of violence and fragility. As Manley O’ Hudson wrote in 1923:

“When President Wilson proclaimed his integral programme, condensed in his fourteen points, and the justice principle for all the peoples and all nationalities, that they have a right to live under identical conditions of freedom and security, be they strong or weak, the war became for millions of combatant men (...) a real crusade for the liberation of oppressed people. Later, by accepting these principles as the base of the armistice, Allied States found themselves morally compelled to undertake a wide project of territorial readjustment that would naturally arouse the most extravagant hopes among numerous European peoples.”¹⁶⁶

In February 1918 and until the beginning of the peace conference in January 1919, it was not clear how both national quests and concerns about world order would be accommodated. The Allied and Associated Powers, however, knew that the conference had to produce, *volens nolens*, a system that acknowledged Wilson’s promised self-determination, without undermining the Allied and Associated Powers’ interests and practices.

¹⁶⁵ President Wilson's Message to Congress, January 8, 1918; Records of the United States Senate; Record Group 46; Records of the United States Senate; National Archives

¹⁶⁶ I translated this myself, the original quote being in French: “Lorsque le président Wilson eut proclamé son programme integral condensé dans ses quatorze points et “le principe de la justice due à tous les peuples et à toutes les nationalités, leur droit de vivre les uns et les autres dans des conditions identiques de liberté et de sécurité, qu’ils fussent forts ou qu’il fussent faibles”, la guerre devint pour les millions d’hommes combatant (...) une veritable croisade pour la liberation des peuples opprimés. Par l’acceptation de ces principes comme base de l’armistice, les Etats alliés se trouvèrent moralement engagés à entreprendre un vaste programme de “réajustement” territorial qui devait naturellement susciter les espérances les plus extravagantes parmi de nombreux peuples européens.” Quoted in House and Seymour, *Ce qui se passa réellement à Paris en 1918-1919*, 165–166.

Delimiting the scope of self-determination at the Paris Peace Conference: a universal or ad hoc principle?

Framed on an international scale, self-determination implied a reconsideration of legitimate units of political authority. Domestically, it implied a reconsideration of the relationship between political institutions and populations living within these units. Invocations of the idea of self-determination throughout World War I thus bore critical implications for the post-war reconfiguration of world order. These invocations challenged pre-1914 worldviews and questioned what the legitimate forms of political authority and modes of sovereignty should be. They also turned the allocation of political rights from an internal issue to a matter of international interest. That the treatment of domestic societies could be of international concern was not a new matter in itself. Throughout the 19th century, first in Vienna in 1815, then in Paris in 1856 and later in Berlin in 1878, attempts had been made to guarantee the rights of specific minority groups in given states. The extent of the concern globally, though, was new. Although that might not have been intentional, Wilson's recurrent appeals to self-determination called into question the 19th century order. They disseminated, worldwide, the very notion of consent of the governed. This bore all sorts of implications. In particular, it disputed the very existence of European colonial rule.

When the conference opened in January 1919, statesmen and delegates present in Paris, and President Wilson in particular, received a multitude of letters and petitions concerning the demands of groups aspiring to self-determination. Many of the petitioners who, from all over the world, had sent their letters or who had come to Paris, adopted in their appeals Wilson's rhetoric of self-determination.¹⁶⁷ One of the most notable examples is Ho-Chi-Minh who, at the time, was working in a Parisian hotel and petitioned Wilson to support the Indochinese cause against the French, quoting the American Declaration of Independence. The avalanche of requests that the statesmen present at the Peace Conference received was completely unexpected and led to arguments between the members of the Allied and Associated Powers and within delegations.¹⁶⁸ It became clear that a fundamental task of the Peace Conference would be reaching a consensus on the meaning and application of self-determination. Reflecting on the Paris Peace Conference in 1921, Robert Lansing, Wilson's Secretary of

¹⁶⁷ These demands are described at length in Manela, *The Wilsonian Moment*, 2007.

¹⁶⁸ This in particular was the case of the US delegation. Lansing, the US secretary of State, and Wilson constantly argued about self-determination, but also about the constitution of the League of Nations. For the debates within the US delegation see in particular Walworth, *Wilson and His Peacemakers*.

State, famously wrote that the phrase self-determination was “loaded with dynamite.”¹⁶⁹ Indeed, finding an agreement revealed to be much harder than expected, in particular because of the ambiguities and promises created by Wilson before the end of the war.

With its meetings, special committees and agreements, the Peace Conference that opened on 18th January 1919 and came to an end on 21st January of the following year was a site of extended international interaction and debate. For more than one year representatives invited from twenty-nine countries from all over the world discussed and sought to settle peace. Over that period, self-determination was erected as the accepted standard for post-imperial statehood and membership in international society. At the conference, teams of historians, geographers and anthropologists worked on the contested matter: who should be granted self-determination and upon which criteria? The actual application of self-determination came to be restricted to demarcated, European territories. From an imminent measure for all, the Paris peacemakers turned self-determination into an aspirational principle. Put simply, the interests of the Allied and Associated Powers, many of which were colonial states, were reasserted. This was done at the expense of the other delegations invited to Paris and, crucially, at the expense of colonial peoples whose hopes had been fostered during the war.

From the start of the conference, colonial powers made clear that for no reason would they give up their overseas possessions. For them, the matter was quickly sorted: colonies were not yet ready to be granted the right to choose their own government and destiny. What was to be done, though, with colonies and territories formerly under the authority of the defeated imperial powers, Germany and the Ottoman Empire? Similarly to other colonial territories, the argument was used that they were not yet ready for independence. After all, they still were “races, peoples, or communities whose state of barbarism or ignorance deprive[d] them of the capacity to choose intelligently their political affiliations”.¹⁷⁰ For their own benefit, the Great Powers argued, they had to be put under the tutelage of more mature and benevolent states. As Wilson claimed at the start of January 1919:

“We are friends of these people. Our task in Paris is to organise the friendship of the world, to see to it that all the moral forces that make for right and justice and liberty are united and are given a vital organisation to which the peoples of the world will readily and gladly respond.”¹⁷¹

¹⁶⁹ Lansing, *The Peace Negotiations*, 97.

¹⁷⁰ These words pronounced by Lansing are quoted in Manela, *The Wilsonian Moment*, 2007, 24.

¹⁷¹ The quote is reported in Temperley, *A History of the Peace Conference of Paris*, Appendix II, Part V.

In the name of this friendship and of the Great Powers' generous intentions, an ingenious system was designed to both safeguard colonial interests and "help" the advancement of colonial peoples. This was the League of Nations Mandate System. Put simply, this system implied that colonial territories would be organised in three categories, according to "the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances."¹⁷² Each territory would be placed under the authority of a mandatory colonial power and such tutelage would be exercised on behalf of the League. The configuration of colonial peoples into A, B, C mandates (A for the more advanced and C for the least developed) ironically recalls both Pufendorf and Lorimer's hierarchies of status.¹⁷³ "A Mandates", in particular those formerly under the "Turkish Empire," were considered to "have reached a stage of development where their existence as independent nations [*could*] be provisionally recognised, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone." "B and C Mandates" were placed under more restrictive conditions. C Mandates in particular, "such as South-West Africa and certain of the South pacific Islands, (...) owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical continuity to the territory of the Mandatory" were placed under the full authority and laws of the Mandatory states.¹⁷⁴

Through what was presented as a "promise of emancipation," self-determination was denied, or deferred, to colonial territories. In turn, with the help of benevolent powers and of the future League, colonial populations would achieve a stage of sufficient social, political, cultural and moral development.¹⁷⁵ In the words of Jan Smuts, one of the peacemakers at the conference and General in South Africa:

"The only safe and sound principle for the league to hold on to is that of self-determination and of the autonomous state. There will however be cases [...] where an autonomous regime cannot be adopted from the start, and where the consultation of the country on the question is not formally possible"¹⁷⁶

Unsurprisingly, the line separating who could enjoy autonomy from who could not was still largely racial. Claims for self-determination that the Great Powers took into account in Paris

¹⁷² Art.22, LoN Covenant

¹⁷³ Simpson, "Something To Do With States" in *Oxford Handbook of International Law*, forthcoming 2015.

¹⁷⁴ Art.22, LoN Covenant

¹⁷⁵ For a detailed discussion of the Mandates see Callahan, *Mandates and Empire*.

¹⁷⁶ Quoted in Miller, *My Diary at the Conference of Paris, with Documents*, Vol. III, 44.

came from European territories formerly under the rule of the Austro-Hungarian and Ottoman Empires.¹⁷⁷ Deemed perhaps less backward than others, Central and South Eastern European peoples were considered to be ready for membership in the family of nations. As we will see, though, they too had to fulfil specific criteria set out by the Allied and Associated Powers, and demonstrate what Jackson Preece has termed “a willingness to comply with a standard of civilisation.”¹⁷⁸ Hence, despite self-determination’s promise of subversion in favour of equality, the Paris Peacemakers continued to view world order along lines of hierarchy. They reorganised it accordingly.

Self-determination: a principle of legitimate statehood and membership, yet omitted from the League of Nations Covenant

Disputes over the delimitation of the scope of self-determination during the Paris Peace Conference are clearly embodied in the discussions that accompanied the drafting of the Covenant of the League of Nations. Wilson was at the head of the conference commission in charge of composing the Covenant for the League that, withal, the United States never joined. For weeks, he insisted on including the principle of self-determination, even though neither the other delegations nor his advisers could agree. Some did not share the formulation; others simply disagreed with the insertion of the principle in the final document.¹⁷⁹ In eight of his drafts Wilson proposed to include it, using the same formulation:

“The future government of these peoples and territories shall be based upon the rule of self-determination or the consent of the governed to their form of government shall be fairly and reasonably applied and all policies of administration or economic development be based primarily upon the well-considered interests of the people themselves.”¹⁸⁰

In his ninth and final draft, presented before the commission on 3rd February, Wilson finally omitted it. Manela explains this change as resulting from the meeting that Wilson had the previous day with George Creel, head of the US Committee on Public Information.¹⁸¹ During this meeting, Creel, who had just come back from a journey to Central Europe, told Wilson that he saw there that local populations respected the president so much that they hung his portraits in their houses and almost considered him a “popular saint”.¹⁸² Scared by this

¹⁷⁷ With the exception of Poland, which had been under the rule of several empires

¹⁷⁸ Jackson Preece, “Minority Rights in Europe,” 80.

¹⁷⁹ Miller, *My diary at the Conference of Paris, with documents*. Vol. III. Doc 110 on Smuts’ views on the Covenant (40-44) and Doc. 117 on Miller’s own comments (305)

¹⁸⁰ R 1123. Series: 301 to 600. LNA, Geneva

¹⁸¹ That was Wilson’s propaganda organisation created during the War.

¹⁸² Manela, *The Wilsonian Moment*, 2007, 60–61.

overwhelming responsibility, Manela suggests, Wilson amended the draft.¹⁸³ Wilson began to fear the consequences of the speeches he had previously given about the right of all peoples to self-determination. As he asserted before the US Congress at the end of 1919:

“When I gave utterance to these words, that all nations have a right to self-determination, I said them without the knowledge that all these nationalities existed, which are coming to us day after day”.¹⁸⁴

Hence, in the final draft presented by Wilson self-determination was not mentioned. Instead, territorial integrity and political independence were assured to the future members of the League (art. 10). Avoiding mention of self-determination in the Covenant did not, however, change the substance of the matter. It was too late to simply ignore the question of self-determination and the rights of national populations. For months, self-determination had been presented as the solution for world peace. Wilson’s communicative action had led to the internalisation of the principle by populations, state leaders and domestic and international civil associations. As Baron Wlassics wrote in 1922:¹⁸⁵

“[...] self-determination has become today very wide-spread. Every one thinks he grasps the tenor of it; it is so simple, so natural and so just that nations should decide their own destiny”.¹⁸⁶

As we are about to see, the principle of self-determination was at the root of the treaties with the Successor States of the Empires and of the Minority Treaties drafted at the conference. The seeds of change had been planted. Self-determination had become, although for many only in future terms, the principle of legitimate statehood and membership after empire. In accordance with its differentiated, or hierarchical application, self-determination was, however, excluded from the League’s Covenant.

Self-Determination and the Rights of Populations: a New Standard of Civilisation?

In the previous section, I have argued that in Paris, self-determination became the shared principle of legitimate statehood and membership after empire. As a result of its invocations, self-determination introduced a fundamental innovation internationally. In becoming a core principle of world order, it implied a democratic rethinking of the relationship between states

¹⁸³ Manela, *The Wilsonian Moment*, 2007.

¹⁸⁴ Quoted in Fink, *Defending the Rights of Others*, 21.

¹⁸⁵ Baron Gyula Wlassics was an Austro-Hungarian politician in favour of equal religious rights, later member of the Hungarian Academy of Sciences.

¹⁸⁶ “The right of self-determination and the protection of national minorities: reply given to the question of the Central Organisation for Durable Peace”. Library of the United Nations. Geneva.

and domestic societies. I have also underlined though that its application in post-war practice came to be restricted to specific territories. Due to their state of backwardness, Europeans and Americans claimed, colonial peoples were excluded, for the time being, from self-determination. The principle was directed to those European territories formerly under the rule of Austro-Hungary and, although to a lesser extent, the Ottoman Empire. Located at the borderlands of both the European society of states and of those same empires, until the start of the war peoples living in the territories of Central and South-Eastern Europe were largely viewed by Europeans as hybrid populations. Able to mobilise national sentiment and organise politically, they were also deeply rural and poor. Once it became obvious towards the final stages of the war that in Europe imperial rule had come to an end, groups that had mobilised politically throughout the 19th century came to be qualified for self-determination.

Because of the area to which it was directed, self-determination took on a specific tone. As a legacy of imperial politics of recognition, groups in Central and South-Eastern Europe identified themselves primarily along lines of ethnicity, language and religion.¹⁸⁷ To maintain peace in the area, the peacemakers believed that territorial borders of post-imperial states should be drawn as far as possible along ethno-linguistic and, to some extent, religious lines. For months specialised commissions worked on the drawing of territorial boundaries. It became increasingly clear that if majoritarian ethnic groups were to have a state of their own, it would inevitably create minorities. In line with previous 19th century international minority provisions, the Allied and Associated Powers determined that if majorities were to realise the right to self-determination, minorities should have guarantee, or recognition and protection of their rights. As we are about to see, recognition of legitimate statehood for the new, post-imperial states was made conditional upon the ratification of the Minority Treaties.¹⁸⁸ With their manifold contradictions, these treaties established the rights of the “self-determined” peoples and the correlative responsibilities that the new states would have, as to the treatment of domestic societies. Treatment of internal populations became a fundamental criterion of legitimacy in the post-war process of expansion of international society. If the new states

¹⁸⁷ Ethnicity and religion did not always coincide, as we will see more in detail for the post-Cold War era.

¹⁸⁸ Minority Treaties included: Bilateral Treaties, those of our concern, signed by the Allied and Associated Powers and, respectively: Treaty of Versailles (“Little Versailles”) with Poland; Treaty of Saint-Germain-en-Laye with Austria, Czechoslovakia and Yugoslavia; Treaty of Paris with Rumania; Treaty of Sèvres with Greece; Treaty of Trianon with Hungary; Treaty of Neuilly-sur-Seine with Bulgaria; Treaty of Lausanne with Turkey. Although they do not fall in the scope of this thesis, there were also unilateral declarations and, in particular bilateral agreements on the exchange of populations between states. The latter will be mentioned below.

sought international recognition as legitimate members of the family of nations, their national representatives had to prove their goodwill by signing the treaties.

Through these treaties, the “moral purpose of the state” came to be defined along lines of protection and good treatment of domestic populations.¹⁸⁹ Yet how this was to be done within the new states, once the treaties were ratified, was not fully clear. Despite the work of more “mature” states’ delegates in setting the criteria of good domestic order in Paris, the treaties bore numerous imprecisions. Due to the delegates’ inexperience, prejudiced views and lack of knowledge of the area, the treaties presented several inconsistencies. In the spirit of this project, I have identified two of them specifically. First, the treaties implied political equality and equality of rights within the polity, yet suggested a hierarchical recognition of ethnic groups. Second, while they promoted, though weakly, a norm of non-interference in the name of new states’ sovereign equality, by setting the criteria of just “domestic jurisdiction” they also implied the opposite. Domestically, once the new post-imperial states were recognised, discrimination often prevailed over inclusion. In some cases exclusions were even justified in the name of contradicting international norms. Individuals could report their mistreatment to the special Minority Section set up at the League of Nations. However, no international mechanism of minority protection existed. Throughout the 1920s the Minority Treaties were thus used as moral, rather than legal markers of civilised behaviour. Setting expectations on appropriate domestic behaviour, the Treaties functioned as a cultural standard upon which judgements on the state of advancement of the new states would be articulated.

The purpose of this section is to show how self-determination became, through the drafting of the Minority Treaties, a standard for civilised statehood and membership in international society. I do so by giving content to the three ingredients attached to self-determination - people, rights and responsibilities. I show how these delineated international expectations about what good domestic order ought to be within the new equal sovereignties. First I discuss how self-determination came to be ethnically connoted and how accordingly, ideas of minority recognition and protection emerged. Then, I present the rights and responsibilities attached to self-determination in the Treaties themselves along with their flaws. I thus outline the role of the Minority Treaties as cultural, rather than legal, benchmarks, once they were ratified.

¹⁸⁹ I borrow the expression from Reus-Smit, *The Moral Purpose of the State*.

It was during discussions about the settlement of populations and territories at the conference that the specific, ethno-national conception of self-determination clearly emerged. This was directly related to the geographical area to which self-determination was to be directed, though both the Bolsheviks and Wilson in his Fourteen Points had expressed their understandings of the ethnic basis of self-determination long before: Central, Eastern and South-Eastern Europe. It should be noted, however, that for a while, after the armistice was signed on 11th November 1918, the Allied and Associated Powers did not predict the complete end of the structure of the Austro-Hungarian Empire. In contrast to the Ottoman Empire, they hoped that the Peace Conference would bring into being a decentralised federation of the “Danubian people”, guaranteeing political order. These expectations were abandoned soon after the beginning of the conference.¹⁹⁰ The architecture of the Austro-Hungarian Empire had been undermined during the war, its regime and structure delegitimised both internationally and internally. The war had led to the strengthening of pre-existing nationalist movements and, in certain cases, the Allied Powers had supported these movements for strategic reasons. Wilson’s Fourteen Points had been explicitly directed to the territories and populations under Austro-Hungarian and Ottoman rule. At the start of 1919, the Paris peacemakers could not ignore these aspects.

During the first months of the Conference, the Great Powers’ representatives largely believed that it would be possible to make the borders of the new states coincide with those of the (ethnic) nations. Self-determination, it was thought, would be recognised along the lines of *national* majorities in the areas concerned. The problem was that none of the peacemakers, really, was familiar either with the distribution of populations in the region or with the ethno-national allegiances that the claimants were advocating.¹⁹¹ Soon after the start of the conference, it became evident that for historical and demographic reasons initial promises could not be kept.¹⁹² There were too many populations not identifying, or not identified, with recognised majorities and these would exist beyond any territorial boundary that could ever have been drawn. National groups would overlap because they could not identify with clearly

¹⁹⁰ House and Seymour, *Ce qui se passa réellement à Paris en 1918-1919*, 82.

¹⁹¹ *Ibid.*, 86.

¹⁹² Because of the border question between Italy and Istria, Italian representatives embodied a notable exception to this general belief. See for more details: Ballinger, *History in Exile*.

demarcated territories, while small groups of nationalities would find themselves in states explicitly defined as ethnically exclusive.

Tracing the frontiers of the new political communities was thus made complex. The areas to which self-determination was directed had been under the rule of two multi-national empires. These were characterised by overlapping membership regimes, both institutionally and territorially. The strategy that both Austro-Hungarian and Ottoman authorities used to handle this mismatch had been to grant cultural autonomy to members from ethnically or religiously recognised groups. Not all groups though would be recognised. For example, the Ottoman authorities considered Jews and Christians as “second class” subjects. In both Empires, though, their censuses contained information as to ethnic and religious categories. From the censuses, it transpired that populations identifying with similar ethnic, religious or linguistic groups were often dispersed over the territories of the Empires. Recognition was thus primarily non-territorial.

As early as April 1919 it became clear that it would be impossible to draw territorial borders along exact lines of nationality.¹⁹³ Self-determination was, in the words of Wilson, fundamental for post-war peace, but if minorities were to be excluded that would destabilise the international settlement. Discussions within the commission on the creation of the League of Nations led to the idea that this unexpected discrepancy should be overcome by granting certain guarantees to minorities within new states. The peacemakers could not allow the domestic creation of categories of semi- or non-citizens, while recognising post-imperial states as new members in international society. Both President Wilson and Lord Cecil, the UK Under-Secretary of State for Foreign Affairs, proposed to codify and generalise rights of domestic populations to all, and not just to the new states, by including them in the Covenant of the League. In Wilson’s words:

“Take the rights of minorities. Nothing, I venture to say, is more likely to disturb the peace of the world than the treatment, which might in certain circumstances be meted out to minorities. And, therefore, if the great powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantees have been given?”¹⁹⁴

¹⁹³ Miller, *My Diary at the Conference of Paris, with Documents*, 40–44.

¹⁹⁴ Excerpt from Wilson’s speech at the plenary session on 31st May 1919 AA VV, *The Treaty of St. Germain*, 569.

The proposition was, however, rejected, due to disagreements among the Allied and Associated Powers (would they also have to guarantee these rights within their domestic constituencies?). On 2nd May 1919 it was decided that specific treaties between the new states and the Allied and Associated Powers needed to be drafted.¹⁹⁵ These treaties would deal with the definition of the borders of the new states, the constitution of their political communities and the setting up of special norms for minorities. In other words, as tools of international disciplining, the treaties would establish what good domestic order within the new states should be. With regards to the peacemakers' view on overseas colonies, Edward Keene writes:

“Simply put, Europeans and Americans believed that they knew how other governments should be organised, and actively worked to restructure societies that they regarded as uncivilised so as to encourage economic progress and stamp out the barbarism, corruption, despotism, and incompetence that they believed to be characteristic of most indigenous regimes.”¹⁹⁶

Although not as discriminatory, European and American views on Central and South-Eastern Europe were similarly hierarchical. The Minority Treaties were to set what the Great Powers deemed as civilised criteria for legitimate statehood and membership in post-war international society. Access to the family of nations for the new states was thus made conditional upon the ratification of the documents. In Paris, a special committee to deal with the drafting of the treaties was created, following the decision of the Council of Four, composed of Georges Clémenceau, David Lloyd George, Vittorio Emanuele Orlando and Woodrow Wilson.¹⁹⁷ The Committee on New States and the Protection of Minorities held its first meeting on 3rd May 1919.¹⁹⁸ Despite its sixty-four meetings between then and 9th December 1919, the establishment of international guarantees on the treatment of domestic societies was a matter of great controversy. The work of the committee influenced all the Minority Treaties resulting from the Paris Peace Conference, yet it failed to smooth many of the ruffled feathers. Altercations on the scope of self-determination continued, in particular between the committee and representatives of the new states.

Numerous delegations present at the Paris Peace Conference, in particular those of the successor states of the Empires, were against these specialised treaties. New states' delegates

¹⁹⁵ Miller, *My Diary at the Conference of Paris, with Documents*, vol XIII.

¹⁹⁶ Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002, 98–99.

¹⁹⁷ The Council of four was formed in March 1919 to speed up the work of the conference. Known as the Supreme Council of the conference it had initially 10 members and was later reduced to four.

¹⁹⁸ From the Minutes of the first Meeting. Box S336. LNA, Geneva.

sent to Paris to negotiate the treaties with the special committee were very discontented with the peacemakers' decision that states should give international guarantees on the treatment of domestic populations. Were they not sovereign equals, after all? During the drafting of the Minority Treaties, national delegates made unofficial declarations and sent letters to complain about what they claimed would be a violation of the national sovereignty of the new states. In the words of Bratiano, president of the Romanian delegation, sharing his position with Kramar, representing the Czechoslovakian delegation, Paderewski from the Polish delegation and Trumbic from the Yugoslav delegation:

"If minorities realise that the freedoms that they enjoy are guaranteed to them not by the state to which they belong, but by the protection of an external presence, the foundations of the state will be undermined."¹⁹⁹

In spite of their discontent, the signatory states officially accepted the international nature of responsibilities towards domestic societies as delineated in the final version of the treaties, all constituted to a similar pattern. All the successor states, in fact, ratified the Minority Treaties. The Committee on New States had made it clear: should the successor states want to take part in the Treaties of Versailles and Saint-Germain concerning, respectively, the peace and territorial conditions for Germany and Austria, they were to sign their respective minority treaty.²⁰⁰

It should be said though that even if the Paris Peace Conference was at the forefront of the contemporary codification of minority rights, the first minority recognitions had been enunciated much earlier.²⁰¹ Minority protection is an old notion that took a specific and clearer shape at the conference. If one goes back in time, references to minorities are to be found in the 1648 Peace Treaties of Westphalia. In the Treaty of Osnabruck, part of the Peace of Westphalia, toleration of collective worship of minority faiths in private life and in "clandestine churches" was mentioned.²⁰² The grounds for the 1919-1923 Minority Treaties were clearly laid over the 19th century. In 1878, the Treaty of Berlin, signed by the United

¹⁹⁹ Extract of the minutes of the session of the Committee on New States of 31st May 1919. Box S336. LNA, Geneva. I have translated myself the quote, the original being in French: "Si les minorités savent que les libertés dont elles jouissent leur sont garanties non pas par la sollicitude de l'Etat auquel ils appartiennent mais par la protection d'une présence étrangère quelle qu'elle soit, la base de l'Etat sera miné".

²⁰⁰ From an article of the newspaper *Le Temps* of 12th September 1919. Box S 336, File 5. LNA, Geneva. NB: some of the Minority Treaties have the same name of Peace Treaties. This is the case of the treaties of Versailles and Saint-Germain for example

²⁰¹ Krasner, *Sovereignty*, 73–84.

²⁰² The equality of Protestantism and Catholicism also had to be recognised in the domestic legislation of the contracting parties to the treaty. See Schulz, *Revolutions and Peace Treaties, 1917-1920*, 199.

Kingdom, France, Germany, Italy, Russia, the Austro-Hungarian and Ottoman Empires and specifically directed at the Balkans, introduced two important ideas in relation to minorities. First, it proposed that minority groups identified in the treaty by religion would enjoy a certain degree of autonomy. Second, it set forth that these minority groups could, in certain situations, be granted territorial rights.²⁰³

The novelty in 1919 was that the treatment of internal populations was turned into an externally dictated condition, a standard of civilisation, for membership in international society and for sovereign equality. The treaties were to define rights and responsibilities attached to self-determination. These conditions, however, just like in previous periods, were to be decided by more mature states, members of international society. In some sense, the whole edification of self-determination as the criteria for post-imperial statehood and membership in international society was, after all, not that far from 19th century lawyers' claims regarding hierarchy and order. In 1889 Oppenheim argued, for example, that, "statehood alone does not include membership in the family of nations."²⁰⁴ After World War I, just as in the 19th century, access to international society was thus open only to states meeting criteria familiar to (and determined by) existing members. By being officially accepted at the Peace Conference, sending delegations, taking part in international discussions, the successor states of the empires had already been granted a certain degree of recognition, well before the signature of the Minority Treaties. Their acceptance of the treaties signified, I suggest, that they gave their guarantee to fulfil the conditions required to become rightful and equal members of the society of states.

Legitimate statehood and membership: the contradicting grounds of the Minority Treaties

Just as the democratic *ideals* that Wilson and other European and American peacemakers shared were flawed by hierarchical worldviews, the Minority Treaties that they crafted presented various contradictions. Two issues were particularly salient.²⁰⁵ First, the treaties professed to promote domestically the norm of equality within polities, at the same time as

²⁰³ See in particular the articles of the Berlin Treaty on the Balkans: XXXV, XLIV, LXII.

²⁰⁴ Oppenheim, *International Law*, 134.

²⁰⁵ NB: numerous criteria were present in the treaties that defined legitimate statehood, such as traffic and trade. Those of interest to this thesis though are related to the primary purpose of these documents: minority rights and membership/citizenship questions attached to self-determinationw.

hierarchical recognition of specific ethnic groups. Second, while the treaties asserted non-interference in the name of states' sovereign equality, by their very provisions they intruded in the "domestic jurisdictions" of new states. This uncovers, I suggest, a tension between egalitarian conceptions of self-determination on one hand, and practices of hierarchy associated with self-determination on the other. This tension was twofold, both domestic and systemic. I explore the latter in the next chapter. In what follows I present a few considerations on the former.

Literature dealing with the Minority Treaties is primarily concerned with the minority provisions included in the documents.²⁰⁶ The treaties though also included clauses on the delineation of the political community itself. The treaties sketched out what the domestic provisions for the allocation of nationality should be. All the treaties assured that the criteria of citizenship allocation should be equality and that anyone who could not be granted the nationality of another state could acquire citizenship, through *ius soli*, if residing in the new state. The treaties also stated that all those having the same nationality should be equally treated by state authorities, and granted the same guarantees of protection as well as political and civic rights.²⁰⁷ To be sure, the enforcement of these provisions, as much as the criteria for acquisition of national citizenship, would depend, later, on each state's domestic legislation and practices. It should be noted, however, that although minority clauses existed before World War One, no international provision had until then engaged with states' competence in matters of acquiring or losing citizenship. That was a significant novelty attached to self-determination. From then on, the treatment and delineation of domestic societies were to be, in principle, matters taken into consideration internationally.

As a result of these provisions, it appears that minority rights were codified in the idea of *equality of individuals*, and not just that of groups. This notion of equality was conceived in the form of a guarantee for all citizens to have the same political and civil rights within a polity. In the treaties, the peacemakers explicitly introduced the idea of domestic political equality (through, for example, the acquisition of citizenship via *ius soli*) and equality of rights (both civil and political). All the templates of the treaties presented the same article on the equality of citizens of one state: "All ... nationals shall be equal before the law and shall

²⁰⁶ Claude, *National Minorities an International Problem*; Fink, "The League of Nations and the Minorities Question"; Fink, *Defending the Rights of Others*.

²⁰⁷ "Report on the protection of minorities" by the Committee established by the Resolution of the Council of the League of Nations of 7th March 1929, 6. LNA, Geneva.

enjoy the same civil and political rights without distinction as to race, religion or language”.²⁰⁸ The treaties thus both “provided for protection of all individuals, against discrimination by the states” and allocated “a number of group rights relating to language, education and cultural [*and religious*] institutions”.²⁰⁹ The former was a precondition for the latter. While self-determination implied a right to political autonomy and independence, it also involved correlative – and somehow corrective – responsibilities in the form of a guarantee of equality of all and recognition of specific rights, for specific groups.

In theory, all that made sense. In practice, the problem lay in the criteria used for such recognition. Despite available population censuses, the treaties did not recognise all the ethno-religious groups present in the territories of the new states. For example, when the question was raised for the Kingdom of Yugoslavia as to the Jewish minority, the Committee decided that the (religious, rather than ethnic) group was not numerous enough in the country to bear mention in the Minority Treaty of Saint-Germain. A mark of anti-Semitism, the official justification redundantly asserted that, “it [was] desirable to limit conversation to the case of those minorities as to which it might be suggested that special treatment was desirable”.²¹⁰ As Carole Fink has indicated, acknowledging the rights of certain groups while ignoring others gave rise to the problem of the “named and unnamed minorities, protected and unprotected people”.²¹¹ These distinctions, as we shall see in the next section, created *de facto* different categories of citizens within states.

This, however, was not a matter of concern as to its consequences when the treaties were being drafted and ratified. After all, when the representatives of the new states signed their respective treaties they were asked to give two basic international guarantees. First, they had to guarantee that the Minority Treaties would be integrated into their domestic legislations. Second, they had to give assurance that minority protection would be viewed as an obligation of international interest, under the guarantee of the League of Nations.²¹² Because of the lack of any enforcement mechanism, the treaties were legally weak. As we will see in the next chapter, over the 1920s they came to constitute ambiguous cultural markers defining new

²⁰⁸ Box S336 “1919-1922: protection des minorités par la SDN” - File 1: Général 1er janvier 1921 – 30 Tseptembre 1921. LNA, Geneva

²⁰⁹ Lake and Reynolds, *Drawing the Global Colour Line*, 335.

²¹⁰ 32nd meeting of the Commission on New States, Minutes. 10th July 1919. S336. LNA, Geneva.

²¹¹ Fink, *Defending the Rights of Others*, 73.

²¹² From Helmer Rostling’s “Protection des minorités par la Société des Nations”, in *Revue Internationale de la Croix-Rouge*, Year: 4; n. 39; 15 March 1922. 203. section 41, Dossier 7727. R1648. LNA, Geneva.

states' good domestic order. Post-imperial states were politically and morally responsible to uphold international standards before international society. As instituted at the Paris Peace Conference, self-determination operated in a way not dissimilar to a standard of civilisation – a highly contradictory one.

Another incongruity that has been acknowledged in the literature lay in the coexistence of two different and essentialist discourses on how to deal with self-determination for ethnic peoples. The first discourse supported the view that for peace to be achieved minorities should have protection within an ethnic nation-state. This was the view that Wilson supported. The second discourse, in contrast, suggested that what mattered most was that state borders should coincide as far as possible with those of the nation. If ethnic minorities existed within a state, they should simply be displaced. This conception derived from the view of the French anthropologist Georges Montadon who, in his 1915 memorandum, argued that, “the stability of national frontiers delineated according to ethnic criteria could best be secured through the removal of inassimilable ethnic minorities”.²¹³ The first discourse was embodied in the Minority Treaties, and is taken into account in this research as it bears direct implications on the hierarchical recognition of groups within post-imperial states. The second view was instead most visibly embodied in the two conventions on population exchange signed under the auspices of the League of Nations. Referring to pathological homogenisation, this thesis acknowledges it but does not directly engage with it.²¹⁴

In Paris, it was the president of the Greek delegation, Eleftherios Venizelos, who most forcefully supported the latter view. He suggested that the accordance between states and nations would be best facilitated by reciprocal migratory agreements between states. Though morally problematic for many, it was decided that compulsory population transfers could be organised. These, however, could only take place if two states agreed on them.²¹⁵ Two major arrangements were constituted. The first was signed between Greece and Bulgaria and the second, between Greece and Turkey. As Eric Weitz has indicated, almost ironically minority recognition and deportation emerged together in Paris.²¹⁶ The tension inherent in the ethnic

²¹³ Fink, *Defending the Rights of Others*, 47.

²¹⁴ By pathological homogenisation I refer to what Rae sees as state-builders' tendency to homogenise population groups through mass killings and deportations. See Rae, *State Identities and the Homogenisation of Peoples*, 2002.

²¹⁵ Minutes of the Committee on New States. 47th meeting on 28th August 1919. Box S336. LNA, Geneva.

²¹⁶ Weitz, “From the Vienna to the Paris System.”

connotation of self-determination and its devastating consequences have been largely recognised in the literature. The stigmatisation of ethnic self-determination, however, seems to me more of a judgement in retrospect, than something the peacemakers could have fully comprehended at the time – be that related to their inexperience, racism, ignorance or fear of interference. Importantly, however, agreements on population exchanges did introduce further hierarchies in the recognition (or lack of recognition) of groups and their rights within post-imperial states. It is to these that we shall now turn and to their implications as to international acceptance of new states as legitimate members of international society.

Conclusion

I have argued above that in Paris, from an idea with multiple meanings attached to it, the peacemakers turned self-determination into a principle of world order. In 1919, self-determination came to constitute the accepted standard of post-imperial statehood and membership in international society. However, despite Wilson's initial promises to expand the allocation of the principle of self-determination to all the peoples on the planet, this did not happen. The Allied and Associated Powers maintained instead pre-1914 racial hierarchies. Colonial powers kept their colonies, while territories formerly under the authority of defeated powers were put under the tutelage of the League of Nations, with the promise that one day, they would be ready for self-determination. Somehow hypocritically, I have suggested, self-determination became an aspirational principle for all. In practice, it was narrowed down in its scope and used, *ad hoc*, in the redefinition of Central and South-Eastern European borders. It was precisely because of the nature of the area to which it was directed that self-determination took on an ethnic tone.

Self-determination was recognised for those peoples that had mobilised nationalist sentiment during the nineteenth century, under the Austro-Hungarian and Ottoman empires. As any standard, it was explicitly tied to international expectations. These, I have suggested, were expectations about what “good” domestic order should be after statehood was recognised. They were framed in terms of specific sets of rights and responsibilities. Recognition of new states as equal members of the post-war “family of nations” was made conditional upon the ratification of the so-called Minority Treaties. These treaties each delineated internationally how national authorities should define and treat internal societies and groups. This, however, was done on slippery grounds. The treaties upheld political equality and equality of rights

within the polity, yet they concurrently promoted hierarchical recognition of national and ethnic groups. This was not a matter of too much concern to the peacemakers when the treaties were drafted and ratified. What mattered at the conference was that standards for civilised statehood and membership were set. How they would work would be a different matter, as we are about to see in the next chapter.

Hierarchical Membership and Sovereign (in)Equality at the League of Nations

In Paris, self-determination became the shared standard of post-imperial membership within international society. In turn, the Minority Treaties came to outline the contours of appropriate state conduct, along with the defining components of self-determination: peoples, rights and responsibilities. These treaties suffered from major flaws but, importantly for us, they stressed that political equality and equality of rights were to be the basis of self-determination for the new states. However, they also fostered, in a more ambiguous way, logics of hierarchy, in recognition of certain groups over others. This contradiction did not matter much during the drafting phase of the treaties. What mattered to the peacemakers, really, was settling the borders of the new states without further prolonging discussions. In the years following the conference, the way domestic societies came to be delineated and treated within many newly formed states did not, however, follow international expectations. Following pre-1914 logics of imperial hierarchies, practices of hierarchical membership were inaugurated in many newly formed states. Post-imperial hierarchical membership was in contrast with international conceptions of equality that, despite obvious flaws, were embedded in the idea of self-determination upheld in Paris. In this section I contend that as with other Minority Treaties, the Treaty of Saint-Germain failed to grasp the complexity of the domestic context to which it was directed: that of the Kingdom of Yugoslavia with its ethno-national mosaic of peoples. Moreover, the international recognition of certain minorities and not others facilitated the establishment, by Yugoslav state officials, of domestic practices of hierarchical membership. Inaugurated along old social categories inherited from imperial politics of recognition, these were also justified in the name of international principles.

With their contradictions, throughout the 1920s, the Minority Treaties continued to function as standards of appropriate state conduct and identity for the new states. These documents were legally binding though no mechanism of enforcement existed after their ratification. However, by their very role, they constituted tools of international monitoring within

domestic jurisdictions. In this chapter, I want to suggest that in the years following the conference, the Great Powers and the League of Nations used the Minority Treaties as elusive markers to delineate what good, *civilised*, domestic order ought to be. This did not have an immediate domestic impact for new states. Although individuals could petition against the state they lived in, once petitions were received not much could be done other than discussing them within the League. It would be a mistake, though, to dismiss these discussions as they do have something to tell us about both the logics of stability and change in world order. By ratifying the Treaties after the war, new states would have their sovereign equality recognised. Nevertheless, these discussions suggest that the status as sovereign equals for the new states was, during the 1920s, still conditional upon the existence of (rather than compliance with) these treaties. Petitions received at the League would function as a constant reminder of that.

Accordingly, this chapter is organised in two main sections. The first is a practical illustration of the relationship between a Minority Treaty, practices of hierarchical membership and state formation, through the study of the curious case of the Kingdom of Yugoslavia. In the second section I present my argument, on conditional sovereign equality for the new states and stratification in international society during the 1920s. These two sections uncover the tension highlighted in the theoretical framework of this thesis. This is the tension between egalitarian conceptions of self-determination on one hand, and practices of hierarchy (both domestic and systemic) associated with self-determination on the other.

The Kingdom of Serbs, Croats and Slovenes: Self-Determination and Minority Rights

As the beginning of the conference came closer, the Allied and Associated Powers' representatives sent invitations to participate to numerous *nations* from all over the world. National delegations were sent to Paris, and among them was the delegation of the newly proclaimed Kingdom of Serbs, Croats and Slovenes, composed of almost a hundred delegates.²¹⁷ The creation of the Kingdom had been proclaimed a month earlier, on 1st December 1918 and, despite its name, it included the territories of Bosnia and Herzegovina, Croatia, part of Kosovo, part of Macedonia, Montenegro, Serbia and Slovenia. The delegation was heard for the first time before the Supreme Council of the conference on 18th February 1919. It was during this meeting that Milenko Vesnic, the diplomatic representative of Serbia

²¹⁷ King Nikola of Montenegro refused to be part of the Kingdom's delegation in the name of the secret Treaty of London of 1915 and Wilson's Fourteen Points that promised Montenegrin independence.

during the first two months of the conference, declared that the delegation he represented was not that of Serbia, a state that had been officially recognised in 1878 with the Berlin Treaty, but that of the Kingdom of the Yugoslavs. Formed on the base of self-determination, Vesnic contended, the Kingdom of Croats, Serbs and Slovenes was the state of a “single people, with three names, three religions and two alphabets”.²¹⁸

The international history of the Kingdom thus started with some confusion at the conference, along with that of the six other states originating from the break-up of the Austro-Hungarian Empire. Domestically, the Kingdom had been formed in the name of self-determination of the oppressed people; internationally, the existence of the state was legitimised by the same phrase. Made up of a mosaic of ethnic allegiances and kinships, the Kingdom of Yugoslavia presented, however, a distinctly complex situation in respect to the other post-imperial states. Within the Committee of New States, discussions about the Yugoslav case lasted considerably longer than those regarding the other states. The duration of discussions depended, to a large extent, upon the Italian opposition to setting the borders. The minutes of the meetings held by the Committee on New States indicate that longest debates concerned the status of identified minorities within the Kingdom.²¹⁹ Who would be recognised? How? Were Yugoslavs a single people, as claimed by Vesnic, or were they a combination of different groups?

The Kingdom’s delegates eventually signed the minority treaty that related to their case – the Treaty of Saint Germain-en-Laye.²²⁰ This treaty did not prevent state officials from discriminating domestically. Discrimination was undertaken against the internationally named minorities and, importantly, against other minority groups that had previously enjoyed recognition under the Austro-Hungarian Empire. In this section I contend that, similar to other Minority Treaties, the Treaty of Saint-Germain failed to grasp the complexity of the Yugoslav ethnic mosaic. For this reason, I believe, it fostered exclusion along membership categories inherited from imperial politics of recognition (rather than hierarchies themselves.) Moreover, the international recognition of certain minorities and not others facilitated the setting up, by

²¹⁸ Minutes of the Supreme Council, quoted in Miller, *My Diary at the Conference of Paris, with Documents*, vols. XIV, 473.

²¹⁹ S336. LNA, Geneva.

²²⁰ For more details on other Minority Treaties see Claude, *National Minorities an International Problem*; Baechler and Fink, “L’Etablissement des Frontières en Europe Après Les Deux Guerres Mondiales = The Establishment of European Frontiers After The Two World Wars”; Fink, “The League of Nations and the Minorities Question”; Jackson Preece, *National Minorities and the European Nation-States System*.

Yugoslav state officials, of domestic practices of hierarchical membership. Following from that, first I outline the story of the formation of the Kingdom of Yugoslavia and its presence at the Paris Peace Conference. Then, I scrutinise the nexus between self-determination, minority treaties and domestic practices of hierarchical membership. I show how hierarchical membership reflected categories inherited from imperial politics of recognition, rather than imperial hierarchies themselves, and how it was the result of contradictory international norms. I do not seek to present a comprehensive argument about domestic dynamics. My purpose is to outline the tension between the norm of equality attached to self-determination and practices of hierarchy undertaken in its name.

The formation of the Kingdom of Serbs, Croats and Slovenes and its reception at the Paris Peace Conference

It is often misleadingly believed that Yugoslavia was the “child of Versailles”.²²¹ The Paris Peace Conference gave to the Kingdom its international visibility. The actual formation of the state though was part of a regional history tightly related to the development of nationalist movements in multinational empires. During the 19th century, nationalist movements arose all over the Austro-Hungarian and Ottoman Empires. The Balkan region was no exception to the trend. The difference, however, from other movements that appeared contemporarily, was that in the Balkan Peninsula (with the exception of Greece) a pan-Slav discourse emerged in addition to ethnically exclusive claims. More precisely, four alternative conceptions of the pan-Slav nation developed, based on different understandings of the nation, as lying in language, religion, race and the state. The Serbian philologist Vuk Karadzic, The Croatian bishop Josip Strossmayer, the Croatian lawyer and politician Josip Frank and the Croatian politician Ante Starcevic, respectively, supported these four visions.²²² Interestingly though, pan-Slav formulations came principally from Croats and Serbs, in the idea that South Slavs formed a single nation, composed of several tribes. In 1918, the founders of the Kingdom of Serbs, Croats and Slovenes used these discourses to legitimise the formation of the new state. Despite claims advanced by the “Yugomakers”,²²³ that is, that the unification movement

²²¹ In fact, the first to have used the expression was the Comintern, in the objective of denouncing the formation of “yet another reactionary state in the new European mosaic” in Stiks, *A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States.*, 99.

²²² See for more details: Ramet, *The Three Yugoslavias*, 39–40.

²²³ The expression is taken from Djokic, *Pasic & Trumbic*, prelude: vxii. The expression refers to the political actors that participated to the construction of the Yugoslav state.

originated in the will of all the people, it was mostly the intellectual and upper classes that supported it.²²⁴ The Yugomakers thus faced the difficult task of reuniting different ideas, views, identities and interests. In the words uttered by an American military observer in Spring 1919:

“While the government officials all take pains to protest that the Serbs and Croats are one people, it is absurd to say so. The social “climate” is quite different. The Serbs are soldier-peasant, the Croats are passive intellectuals in tendency [...]”.²²⁵

In 1914 the outbreak of the war had accelerated the unification of the Yugoslavs and the formation of the Kingdom. Austria-Hungary declared war on Serbia on 28th July 1914, a month after the killing of the Austrian archduke Franz-Ferdinand in Sarajevo by Gavrilo Princip. As early as September 1914, Nikola Pasic, then Prime Minister of Serbia, informed Serbian representatives in the allied countries that the Serbian “aim [was] to create out of Serbia a powerful South-Western Slav state that would include all Serbs, all Croats and all Slovenes”.²²⁶ Serbs, already constituted into a national state,²²⁷ had awakened their nationalism, and so had Croats. In 1915, under the guidance of the Croatian politician Ante Trumbic, the Yugoslav Committee was formed in London with the objective of creating a union of the South-Slav groups.²²⁸ Thus, two ideas coexisted during World War One as to the form that the potential Yugoslav state should have. The first, embodied by Pasic, consisted in the understanding of Yugoslavia as a Serbian dominated state. The second, promoted by Trumbic, rested in the view of an equal union of all Yugoslavs in the form of a federation.

As the war progressed, the idea of a Yugoslav state became increasingly established in different political circles in the region. The formation of a state of the South Slavs was perceived as the only solution for independence from the Austro-Hungarian Empire. On 20th July 1917, after lengthy and conflicting discussions, Pasic and Trumbic, reunited on the island of Corfu, issued a common declaration, deciding the creation of the state of the Yugoslavs, in the form of the Kingdom of Serbs, Croats and Slovenes. The agreement, however, was signed without mentioning the configuration that the Yugoslav state should take. Would it be a centralised state, or a federation of different groups and “peoples”? If so, which would be the ones recognised? Imperial politics of recognition acknowledged the existence of numerous

²²⁴ Rusinow in Djokic, *Yugoslavism*, 12.

²²⁵ Quoted in MacMillan, *Peacemakers Six Months That Changed the World*, 126.

²²⁶ Quoted in Djokic, *Pasic & Trumbic*, 37.

²²⁷ MacMillan, *Peacemakers Six Months That Changed the World*, 122.

²²⁸ Temperley, *A History of the Peace Conference of Paris*, vol IV, 171.

groups. It was decided that this should be a matter to be discussed after the war. Meanwhile, to complicate the picture, Wilson pronounced his Fourteen Points speech, in which he guaranteed national sovereignty to Montenegro and Serbia, as well as access to the sea for the latter. Wilson also contended that the borders of Montenegro and Serbia, along with Italy and Rumania, should be traced in accordance with lines of nationality. Acclaimed internationally, Wilson's speech brought to the region additional confusion.

It was the end of the war that led to the resolution of the Yugoslav question.²²⁹ The Austro-Hungarian regime collapsed and, on 8th October 1918, the National Council of Serbs, Croats and Slovenes was formed. Three weeks later, on 29th October, the newly established National Council announced that “the Yugoslavs [were] a simple, indivisible people demanding self-determination”, who promised to “grant cultural privileges to any racial minority in their midst”.²³⁰ On 1st December 1918, King Alexander –previously regent of Serbia - officially proclaimed the birth of the Kingdom of Serbs, Croats and Slovenes. However, when the Peace Conference began, in January 1919, the newly formed Kingdom did not possess clearly defined boundaries, be they linguistic, ethnic, religious or territorial. These boundaries were to be defined at the conference, where the Kingdom would be internationally recognised. Indeed, when the Yugoslav delegation was sent to Paris, the Kingdom's sovereignty had not yet been recognised. The first country to make the step was Greece, on 26th January 1919. The United States acknowledged its existence soon after, on 7th February. It was only later, on 29th April, that the Allied and Associated Powers' representatives collectively recognised the Kingdom as a sovereign state.

It is largely assumed that the sovereignty of the post-imperial states was made conditional at the conference upon the signature of the Minority Treaties. I believe that this is somewhat imprecise. Similar to other states emerging from the breakdown of the Austro-Hungarian Empire, the Kingdom of Serbs, Croats and Slovenes had been recognised well before the ratification of the Treaty of Saint-Germain. What was conditional, I want to suggest, was the Kingdom's status as sovereign equal in the post-war family of nations. By promising to endorse the criteria of legitimate statehood and membership after empire, the Kingdom was guaranteeing itself sovereign equality within international society. As

²²⁹ Mitrovic in Djokic, *Yugoslavism*, 52.

²³⁰ Quoted in Djokic, *Pasic & Trumbic*, 53.

articulated in the words of the French Newspaper *Le Temps* a day after the Treaty of Saint-Germain was enacted – though not yet signed by Yugoslavia:

“What is the value of the treaty signed yesterday in Saint-Germain? It is hard to tell (...). Given that the Supreme Council (*of the Conference*) does not allow the Kingdom’s representatives to subscribe to the Austrian treaty without subscribing to the special treaty that protects minorities, it is obvious that a state exposes itself to serious consequences if it refuses to sign the special treaty. Yugoslavia in particular might find itself in a very embarrassing position if it did not sign the Treaty of Saint-Germain as it would not have any juridical status, while its geographical situation requires it. Moreover, Yugoslavia would run the risk of inconveniencing several Great Powers, which friendship is necessary to its existence.”²³¹

Similar to other post-imperial states, this process was surrounded by several inconsistencies.

Minority Treaties and Sovereign Inequality

When the conference started, with the exception of self-appointed experts such as Wickham Steed,²³² the Allied and Associated Powers’ representatives did not know much about the Balkans. The Supreme Council of the conference named three experts on 21st January 1919, who were to produce a report on the Kingdom. These were Robert Kerner, Dana Munro and Charles Seymour.²³³ Hence, when the Committee on New States began its work, the team in charge of the drafting of the minority treaty of Saint-Germain was supposedly already familiar with the history of the region. Nonetheless, the drafting of the treaty took considerable time. Difficulties proceeded not only from Italian protestations regarding the boundaries of the Yugoslav state. They also originated from the discrepancy between demographic information that the Committee possessed and the claims of the Yugoslav delegates in Paris. While the national delegates declared that the Kingdom was composed of one single people, with *three* names – Serbs, Croats and Slovenes – the last Austro-Hungarian census of 1910, indicated that in the region corresponding to the new state there were at least

²³¹ 12th September 1919, S336, LNA, Geneva. I have translated this quote, the original being in French: “Que vaut le traité signé hier à Saint-Germain? On ne saurait le dire, tant qu’un autre dialogue n’est pas terminé (...). Du moment que le Conseil Suprême ne leur permet pas (*aux représentants du royaume*) de souscrire au traité Autrichien sans souscrire en meme temps au traité special qui protégé les minorités, il est clair qu’un Etat s’expose à des conséquences graves s’il refuse de signer le traité special. La Yougoslavie notamment se trouverait dans une position très embarrassante si elle ne figurait pas parmi les signataires de Saint-Germain; car elle n’aurait pas de titre juridique alors que sa situation géographique lui commande d’en avoir, et elle risquerait d’indisposer certaines puissances don’t l’amitié lui est indispensable.”

²³² Steed was the *Times* correspondent in the Austro-Hungarian Empire. In 1913, leaving Vienna for the last time, he announced that a catastrophe would occur because of unresolved south Slav question.

²³³ Djokic, *Pasic & Trumbic*, 110.

nine different ethnic groups.²³⁴ After extended discussions within the Commission, and negotiations with the Kingdom's delegates, it was eventually decided that the minorities to be internationally recognised should be "those of specific concern in the Yugoslav region." What this meant and how that selection was made, however, remains unclear.

Similar to the other delegations representing the new states, the Kingdom's delegation was very reticent when it came to signing its respective treaty. On the one hand, as did the other new states' delegations, it claimed that the treaty violated the Kingdom's sovereignty. In a telegramme sent to the Delegation by the Serbian Prime Minister Protic in September 1919, it was indicated that, "there is no need to push us on the signature and dictate it to us. The question is our sovereignty which is being violated without reason".²³⁵ On the other hand, the Kingdom's delegation claimed that the Yugoslavs formed one nation entitled to having their own state. Why, then, should other minorities be recognised? As Pasic maintained before the Committee on New States, "the question concerning the protection of minorities in this state [could] not have a practical scope".²³⁶

This was, of course, the official rhetoric adopted by the Yugoslav delegation during the conference. Its legitimating discourse in Paris consisted in claiming that in the name of their right to self-determination the Yugoslavs had managed to reunite in one "single nation." However, what was meant by the "single nation" at the foundation of the new state was not clear. The meaning, in fact, varied according to who, within the delegation, uttered the phrase. As indicated by Dejan Djokic, "it is too easy, especially in retrospect, to point out ethnic rivalries as undermining Yugoslavia from the very start."²³⁷ In Paris though, the two principal representatives of the Delegation, Pasic and Trumbic, did embody two very different views of the Yugoslav nation. Pasic understood Yugoslavism as synonym of *Greater Serbianism*.²³⁸ Trumbic, in turn, viewed Yugoslavia as the union of three equal groups. With their differences, neither approach recognised the existence of other minorities within the boundaries of the Kingdom. In direct opposition to these claims, the Yugoslav 1921 census

²³⁴ R1700 LNA, Geneva.

²³⁵ Quoted in Lederer, *Yugoslavia at the Paris Peace Conference; a Study in Frontiermaking*, 239.

²³⁶ From a letter addressed by Pasic to the Committee. Minutes of the Committee. Annex to the 33rd section (15th July 1919). LNA, Geneva.

²³⁷ Djokic, *Pasic & Trumbic*, 80.

²³⁸ By "Greater Serbia" I refer to the expansionist movement that characterised Serbian politics at various moments of History. See for more details Ramet, *The Three Yugoslavias*.

showed, two years after, that several other groups inhabited the country.²³⁹ In line with previous imperial politics of recognition, in the Balkans views differed quite importantly on minority questions. For example, under the Austro-Hungarian Empire, groups that were recognised in certain areas were not necessarily acknowledged in others, leading, after the war, to confusion and overlaps in membership regimes.²⁴⁰

The Great Powers' representatives signed the Minority Treaty of Saint-Germain on 19th September 1919, the same day as the eponymous peace treaty with Austria. It was only later, after almost three months of protestation, on 5th December 1919, that the Yugoslav delegation signed the minority treaty, in concomitance with the Austrian one. Within the Yugoslav minority treaty, the only four groups to be granted international recognition were the Bulgarian, Austrian, Hungarian and "Muslim" (most probably meant as Muslims from Bosnia, although this was not specified) minorities (articles IV and X). Crucially, despite Wilson's promise to grant independent statehood to Montenegro in his Fourteen Points, Montenegrins were not given any special recognition. They were instead included in the Kingdom, as part of the Yugoslav people. Similarly to other minority treaties, minority provisions were to be integrated in Yugoslav domestic legislation. The principle of equality of people "without distinction as to race, language or religion" (art. VII) was concurrently introduced in the document and later in the Kingdom's constitution, enacted on 28th June 1921. However, it was only in September 1928 that the first national citizenship law was set in place in the post-imperial state. For almost ten years, the boundaries of the Yugoslav political community, and how they were to be delineated, were simply blurred. Yugoslavia was a state founded on the principles of equality and ethno-national self-determination, but with membership overlaps and uneven recognition. Despite international standards set in the Minority Treaty, the absence of legal norms on citizenship regulation rendered the question of national membership hazy.

During the 1920s, a large number of petitions from individuals and associations identifying with minority groups were sent to the League of Nations' minority session – the majority of

²³⁹ The census was operated by using the criteria of language. Indeed, it proved that 74% of the population spoke Serbo-Croatian, while the rest either spoke Serbian, Croatian or Slovenian; or the language of their identification group (e.g. Albanian 3, 70%; German 4, 2%; Hungarian 3, 90%)

²⁴⁰ See for more detail on imperial politics of recognition and rights: Bartov and Weitz, *Shatterzone of Empires Coexistence and Violence in the German, Habsburg, Russian, and Ottoman Borderlands*.

them being in fact left unanswered.²⁴¹ Numerous individuals identifying with minority groups were discriminated against. For minorities and for the European rights associations, the League's silence was generally perceived as international indifference on the matter. Within the League petitions did raise concern. Because of the way the Minority System itself had been organised, no action was taken. At the League many were aware of the limitations attached to the treaties. The large number of petitions received throughout the 1920s, and complemented by travellers' accounts of the area, did, however, generate considerable debate within the Council and the Minority Section. Before turning to these, though, let us look at practices of hierarchical membership within the Kingdom of Yugoslavia.

Practices of hierarchical membership in the Kingdom of Yugoslavia

Inis Claude has argued that, "obsessed by the ideal of national uniformity, minority states erected centralised administrative regimes and undertook to denationalise minorities".²⁴² Claude's remark directly speaks to the states that agreed on population exchanges as they sought to constitute ethnically grounded nation-states. For the case of the Kingdom, and possibly other states object of the Minority Treaties, I would nuance Claude's remark. I suggest, by looking at the case of the Kingdom of Yugoslavia, that state officials, rather, put in place discriminatory practices of hierarchical membership. These practices followed the lines of older imperial politics of recognition, where certain groups were recognised over others. They were also facilitated by two international principles: self-determination and minority recognition. On the basis of these two international principles, population groups were organised into informal hierarchies. Ironically, the Minority Treaties drafted by mature states led to the possibility of justifying domestic discrimination in the name of international tools. Though, to some extent, hierarchical views on ethnic groups did circulate at the Peace Conference. In the words of historian Georges Louis Beer: "it is far preferable to have Poles under Germans, and Yugoslavs under Italians than the contrary, if there is no other good alternative."²⁴³

²⁴¹ During the research undertaken at the League's archives it was possible to have access to an important number of petitions. In particular: R 584; R 1615; R1693; R 2163; R 2166. LNA, Geneva

²⁴² Claude, *National Minorities an International Problem*, 40.

²⁴³ From his Diary, 16h March 1919 quoted in Cobban, *The Nation State and National Self-Determination*, 85.

As already suggested in the theoretical framework of the thesis, by practices of hierarchical membership I refer to practices that, in domestic contexts, discriminate against population groups with the objective of constituting political communities strongly dominated by one core group. These practices are expressed through the granting or denying of certain rights to individuals, according to the group with which they are identified. These are rights that should allow partial or complete access to membership for individuals within a polity. Indeed, the concept of hierarchical membership implies a prioritisation of individuals considered as “more similar” than others to an idea of the corporate identity of a given state. The unequal allocation of certain rights allows the gradual exclusion of other groups (individuals that self-identify with other groups) residing in the territory of a given state from its national political community. These exclusions are represented by the complete loss of political rights or by the loss of other rights that impede full membership in the body politic.

Accordingly, it is possible to identify, within the Kingdom, four population groups that experienced different treatments. The first category, at the bottom of the hierarchy, encompassed all those individuals identifying with what Carole Fink has called the “unnamed minorities”; these were minorities that were not mentioned in the post-war international treaties.²⁴⁴ Individuals belonging to these groups were, in fact, denied their rights.²⁴⁵ The case of the Albanian minority is emblematic. Representing 3.67% of the entire population,²⁴⁶ most of the members of this minority group lived concentrated in the rural areas of the South of the Kingdom (that is, part of contemporary Kosovo and South Serbia). During the 1920s, individuals belonging to the Albanian minority were deprived of their lands on a huge scale. The Kingdom’s authorities indeed redistributed these lands to other – principally Serbian – individuals, “dans le but évident de changer la physionomie ethnique de la région”.²⁴⁷ Either because they were deprived of their economic resources and residence, or because the Kingdom’s authorities physically compelled them, numerous Albanian families fled. Indeed, according to a report presented by the minority section of the League in 1930, 10, 000

²⁴⁴ Fink, *Defending the Rights of Others*, 273.

²⁴⁵ R 2166; dossier 10528, LNA, Geneva.

²⁴⁶ 1921 census

²⁴⁷ R 2166; doc 19507. Memorandum presented to Erik Colban in 1930 by Hassan Prishtina, former president of the Albanian Council. LNA, Geneva.

individuals of Albanian origin had been obliged to leave the Kingdom in the preceding nine years.²⁴⁸

The second category encompassed groups self-identifying as minorities and yet included in the Serbian “tribe”. These were internationally unnamed minorities, which, despite manifold protestations during the drafting of the Yugoslav minority treaty, were not recognised. The difference from the first group of individuals is that the state authorities – strongly dominated by Serbs - were not interested in expelling them from the Kingdom’s territory. On the contrary, the Serbian majority perceived them as part of the same kin (mostly sharing the same religion) within the frame of the broader Serbian expansionist project. Indeed, in the 1921 census, these groups were “subsumed in the category Serbo-Croats”.²⁴⁹

Two cases specifically fell into this category, interestingly echoed by 1990s problematics. These were Montenegrins and Macedonians. The Montenegrins had been promised a sovereign state in Wilson’s Fourteen Points. However, during the Peace Conference, they found themselves integrated without notice into the Kingdom of Serbs, Croats and Slovenes. The Allies had indeed initially invited Montenegro to participate at the conference, but had then not granted the state a chair. Despite the presence of a national delegation in Paris the numerous protests originating from the Montenegrin authorities were left unanswered.²⁵⁰ From protestations against the international lack of recognition of Montenegro’s sovereignty, throughout the 1920s these claims became allegations of physical mistreatment by Serbian militaries, and of deprivation of civil rights. Schools were closed; public emblems (from statues celebrating the Montenegrin nationhood, to municipal buildings) were destroyed.²⁵¹ Moreover, Montenegrins were denied, in accordance with the Saint Germain Treaty, which did not recognise them as a national minority, any type of political recognition. Despite the numerous petitions received by the League, not much could be done: If, as Belgrade claimed, Montenegrins were considered to be Serbians, then, how could the League interfere?

²⁴⁸ R 2166; doc 19507. These numbers were nonetheless based upon unofficial communications of Albanian associations.

²⁴⁹ Kamusella, *The Politics of Language and Nationalism in Modern Central Europe*, 251.

²⁵⁰ R 584. LNA, Geneva. The box contains all the complaints and petitions that were sent by pre-WWI Montenegrin authorities to the Conference (Supreme Council and Assembly) and, later, to the League’s secretariat and minority section.

²⁵¹ R 584. Assembly Document 141. 15th November 1920 and Dossier 7167. LNA. Geneva.

Similar to the Montenegrin situation was the case of Macedonians from the area that Serbs viewed as “Southern Serbia”.²⁵² Croats and Slovenes had no say on the matter in what was, as a legacy of the imperial membership regime, a decentralised political system. During the conference, Macedonians did not seek recognition as a sovereign state. They just sought recognition as a minority group within the Kingdom. In the first drafts of the minority treaty a specific article dealt with both the recognition of the Macedonian minority and the sending to the region of an international representative to observe the treatment of the population group. Because of disagreements within the Committee on New States and Kingdoms, the clause was entirely removed.²⁵³ As Pasic declared before the Committee for the New States, “there can be no question of a Macedonian ethnic minority in the State of Serbs, Croats and Slovenes. The Macedonian Slavs have always been considered by the authorities of our state as Serbs”.²⁵⁴

Recognised minorities within the Treaty embodied the third category of discriminated individuals. As we have seen, the internationally recognised minorities were the Bulgarian, Austrian, Hungarian and “Musulman” groups. In addition to these, the Kingdom also recognised in its domestic jurisdiction the German minority. By signing the Treaty of Saint-Germain, the newly formed state had committed to enshrine both minority recognition and the guarantee of equality of civil and political rights in its domestic legislation. Yet, while the constitution acknowledged these provisions, specific laws were very strict. In relation to education, for example, the constitution authorised minorities to have their own schools (art. XVI). However, by looking in detail at the law on national education, it seems evident that minority schools could not easily exist. Primary education was controlled by the state, and for this reason minorities could not receive any kind of education in their language of origin, until the end of first school. After that, if minority parents wished for the opening of a minority school, they needed to find at least thirty other potential pupils, all resident within the same municipality.²⁵⁵ While this was feasible in bigger cities, the Kingdom was predominantly rural (and not educated) and populations were dispersed over its territory. Finding thirty students for a single class appeared to be a difficult task. Even if found, often the Kingdom’s

²⁵² Kamusella, *The Politics of Language and Nationalism in Modern Central Europe*, 251.

²⁵³ S 336 LNA, Geneva. Discussions on the matter lasted from May until beginning of September 1919.

²⁵⁴ Minutes of the 33rd Committee on New States (15th July 1919). S 336. LNA, Geneva.

²⁵⁵ R2163 LNA, Geneva.

authorities would claim that it was not worth opening a school with simply one class: just as effectively impeding the access to “minority” education.²⁵⁶

Freedom of religion was guaranteed in article II of the Constitution. Religions practised by recognised minorities coincided essentially with those of Serbs, Croats and Slovenes; these were Catholicism (for Croats, Slovenes, Hungarians and Austrians) and Orthodoxy (for Serbs and Bulgarians). Toleration of other religions, however, was a more complex matter. By their very name, “Musulmans” were granted recognition on a religious basis. Whereas this had not been clearly specified in the Treaty, following previous Austro-Hungarian censuses, Muslims equated to Bosniak Muslims (namely Muslims from Bosnia). While other individuals also practiced Islam (ethnic Albanians in Kosovo and Macedonia) these were not recognised minorities and thus were not allowed to publicly practise their religion, similarly to Jews, who constituted another unnamed minority in the country.

In fine, specifically in relation to political rights, recognised minorities were authorised by law to have their own political organisations and parties.²⁵⁷ Nonetheless, at the first parliamentary elections of 1923, only Muslims and Germans were granted seats at the Parliament.²⁵⁸ While other minority parties were allowed to participate in the elections, none was granted any seat. Indeed, whereas the Hungarian party officially received the support of 8 561 votes (many votes were cancelled by state authorities),²⁵⁹ it was not given political recognition. At the same time, parties receiving fewer votes were recognised at the Parliament. As acknowledged after the elections, the Hungarian party had been proclaimed illegal by the Yugoslav authorities the same day of the elections, as had political meetings and newspapers. The party was accused of being insurrectionist.²⁶⁰ Violations of political rights concerned other minorities. Bulgarians for example never even had the possibility of establishing a political party, with the argument that, despite their international recognition,

²⁵⁶ Dossier 608, R 1615. LNA, Geneva

²⁵⁷ Bozic, “Izmedju Demokrata I Radikala.”

²⁵⁸ They were granted 19 seats. For all the results of the 1923 parliamentary elections see: <http://www.studiacroatica.org/jcs/01/0106.htm>.

²⁵⁹ Bozic, “Izmedju Demokrata I Radikala.”

²⁶⁰ R 1698. Doc 43 534: Letter from the Hungarian representative at the League addressed to Erik Colban recalling the events of 1923 and the Hungarian preoccupation of the matter. 16th April 1925. LNA. Geneva.

there were no Bulgarians in the Kingdom. In turn Serbs claimed that they had been subsumed in the broader Serbian group.²⁶¹

The last discriminated category that can be identified in the first years of life of the Kingdom is more peculiar, as it includes Croats and Slovenes. These two “tribes,” or “groups,” allegedly and officially part of a single nation along with Serbia, did not go through discriminations directly related to the exercise of their political rights: they were in fact full members of the political community. However, as pointed out by Sabrina Ramet, throughout the existence of the Kingdom “Serbs relegated Croatian and Slovenian language and culture to a secondary status”.²⁶² National authorities of Serbian origin, more numerous than the two others, prioritised Serbian co-ethnics largely undercover of assimilationist policies. It is interesting to note that Slobodan Milosevic later used the same strategy throughout the 1990s. In the 1920s, Serbian authorities found their justification in international discourse. The peacemakers recognised in the Minority Treaty pre-war Serbian obligations as a state. The Allied and Associated Powers in Paris had involuntarily legitimated Serbian primacy over other groups. They had acknowledged that Serbia lay at the foundation of the Kingdom of Serbs, Croats and Slovenes,²⁶³ thereby undermining the principle of equality on which, they also argued, the new state should be formed. To be sure, state authorities of Serbian origin instrumentalised these motives to foster practices of hierarchical membership that would privilege them, along older categories of imperial recognition. In turn, in Croatian and Slovenian territories’ local authorities of Croatian and Slovenian origin instigated, on a smaller scale, exclusion towards individuals identifying with Serbian ethnicity.

In the years leading up to World War II, practices of hierarchical membership were used as a rationale for exclusion and mass killings. These were undertaken under the eyes of the League of Nations and its Minority Section, formed after the Conference. In some sense, flawed international provisions on self-determination and minority rights permitted the occurrence of discrimination. Despite international clauses on equality and recognition, no international action was taken to prevent discrimination. Problems at the League were enormous. As put by Fink, “the minorities and their advocates expected that the League would exceed the Great

²⁶¹ R 2119. Petitions from individuals self-identifying as Bulgarians. Internal documents to the League’s secretariat attesting preoccupation on the bad treatment of Bulgarians in Yugoslavia. LNA. Geneva.

²⁶² Ramet, *The Three Yugoslavias*, 51.

²⁶³ This was done by recognising Serbia as a pre-existing state to the conference.

Powers' hesitant gestures; the minority states retained their opposition to any system whatsoever.”²⁶⁴ International society thus came to tolerate practices spanning from hierarchical membership to “pathological homogenisation.”²⁶⁵ These are all aspects of extreme importance to the unfortunate story of the Minority Treaties that the literature acknowledges. There is another aspect attached to the treaties that seems to me important, but that has been overlooked by the literature. I believe that despite their flaws, the Minority Treaties represented a cultural, rather than legal, marker that the League would use to signal their concern. In so doing, the League would use the Minority Treaties but also the numerous petitions attached to them to mark, elusively, that sovereign equality was still conditional for the new states upon the respect of international standards of appropriate, or civilised, behaviour.

Hierarchical Membership and the Minority System: Tolerating the Intolerant?

Within the Council of the League, the organ in charge of procedural decisions regarding minority questions, debates were very frequent during the 1920s. There was a fundamental – and then perceived as irresolvable - tension between the voice to be given to minority claims against the will of states, and concerned states' protestations on the matter. The representatives of the successor states of the empires, along with other national delegates and members of the League, repeatedly protested against the entitlement given to minorities to make claims about alleged violations of their rights.²⁶⁶ The problem was that, while at the conference minority rights had been identified and recognised internationally, the League's system to guarantee the protection of these rights had at no point been mentioned. Be it for fear of interference in the sovereignty of the new states or international inexperience, no enforcement mechanism attached to the Minority Treaties had been set up. Moreover, no general definition of *minorities* had been established.²⁶⁷ Only two Treaties, Versailles and Little Versailles offered a definition respectively with regards to Czechoslovakia and Poland. They referred to minorities (and their members) as those “inhabitants who differ from the

²⁶⁴ Fink, “The League of Nations and the Minorities Question,” 199.

²⁶⁵ This term, indicating mass killings and expulsions has been coined by Rae, *State Identities and the Homogenisation of Peoples*, 2002.

²⁶⁶ “Il est inadmissible de voir un groupe minoritaire prendre part au Conseil, contre un Etat membre de la Société des Nations” Excerpt from a letter to Erik Colban, 16 dec 1927. R1649. LNA, Geneva.

²⁶⁷ In her chapter “The PCIJ and International Rights of Groups and Individuals”, Catherine Broelmann discusses the problems attached to the lack of a clear definition in the interwar period, in *Tams and Fitzmaurice, Legacies of the Permanent Court of International Justice*.123-144.

majority of the population in race, language or religion.”²⁶⁸ Since the definition appeared only in two documents, though, it could not be generalised to other groups in post-imperial states.

The incumbent tasks in organising the Minority System fell to Erik Colban and the Minority Section of the League.²⁶⁹ In 1920, following the endorsement of the “Tittoni Report,” the Secretariat of the League decided, in accordance with the minority section and the League’s Council, that minority claims would be received in the form of petitions addressed to the section.²⁷⁰ These would be “political,” rather than “legal” documents, to be treated as sources of “information only,” unless taken up by an individual council member.²⁷¹ Because of its very political nature, I would say, the petition system for minorities turned out to be very technical and bureaucratised. Petitions could be addressed by any source, meaning that individuals alone could solicit the attention of the League. However, only Council members could place the petition on the agenda of the Council. In other words, Council members would decide whether a complaint bore relevance or not. For this purpose, the Council established the “Committee-of-Three,” formed, for each specific case, by three different Council members. After studying the claim, the three selected members would decide either to dismiss it, to seek informal mediation, or to submit the question before the Council as a whole.²⁷² States involved in petition complaints though had the right to respond while the Committee examined them. This slowed down and often obstructed the matter before the question could reach the Council. If the Council was in fact reached, it could decide whether the matter would remain there or be transferred to the Permanent Court of International Justice.

The newly founded Court could issue both judgements and advisory opinions, and it did so on certain occasions. This, however, rarely happened. Between 1922 when the Court was established, and 1939 when the Minority System came to an end, only 16 petitions reached the Court, out of 930 that were filed, while the Committee-of-Three deemed that 758 were simply not receivable.²⁷³ Instead, within the Council the whole process of consultation with

²⁶⁸ Art. 86 of the Versailles Treaty and Art. 93 of Little Versailles.

²⁶⁹ Erik Colban, a Norwegian diplomat, had been named president of the minority section in 1919 until 1934. For more details on his nomination see: Petricoli and Cherubini, *Pour La Paix En Europe*, 44–45.

²⁷⁰ The report presented by Tommaso Tittoni and adopted by the Council of the League 22nd October 1920 laid down the details of the procedure. Tittoni resigned the same year and became a fascist sympathiser.

²⁷¹ This was the wording used in the report. Cf. *supra*.

²⁷² Council resolutions of 22 October 1919 and 25 October 1919. S336. LNA, Geneva.

²⁷³ In Tams and Fitzmaurice, *Legacies of the Permanent Court of International Justice*, 130.

involved states was generally not made public. Most often, petitions that were considered receivable would be dealt with through what the Council termed *procédure non-écrite*. These were informal, “benevolent negotiations.” During these, states not complying with treaty provisions were threatened that matters would go public and further pursued by the Court, if no measure was to be taken domestically.²⁷⁴ Minority Treaties therefore represented the standard on which discussions were based, operating as constant markers of appropriate domestic behaviour for post-imperial states.

Despite numerous weaknesses, the Minority System presented an innovative feature in relation to *who* was entitled to formulate minority petitions. In 1919, Colban had claimed that, “if the members of the League agree to it, there is no valid reason why an International Court should not hear an individual whose legal rights are based on an International Treaty.”²⁷⁵ A year later it was decided that not only minority organisations or groups could present petitions but that individuals had the right to do so as well. The right given to physical persons to formulate claims that would bear international relevance constituted a radical departure from statist views of international law. Just as for the Mandate System, individuals were given the right to petition. Their voice would be, although only for those living in post-imperial states, the object of international debate. By this, I do not mean that the peacemakers articulated a clear discourse on individual rights just after the war. Quite the contrary: Japan’s proposition to include a clause in the League’s Covenant on racial equality had been deliberately dismissed by the majority of members on the Covenant Commission. This clause would have generalised minority rights, “reducing the necessity for differential treatment of minority groups”.²⁷⁶ Yet, by looking at post-war minority rights as rights concerning individuals specifically, that is collective rather than group rights, we can comprehend more easily the nexus with post-World War II articulations on human rights. At the League, human rights were somewhat an incipient norm. In the meantime, outside the League, the language of human rights was spreading among civil society.²⁷⁷

²⁷⁴ The whole procedure is discussed in detail in Fink, “The League of Nations and the Minorities Question” where she uses the phrase “benevolent negotiations”

²⁷⁵ Document of 15th May 1919. S336. LNA, Geneva.

²⁷⁶ Barth, *On Cultural Rights*, 53.

²⁷⁷ Although this would fall out of the scope of this research, I have found at the LoN Archives numerous documents (pamphlets, books, petitions) in which minority rights were paralleled and included in the phrase “human rights” by civil rights organisations. R 1008, LNA, Geneva. Moreover, the International Federation for Human Rights was founded in 1922. Numerous petitions sent to the Minority Section also made reference to “human rights” see R584, LNA, Geneva.

Inevitably, the right granted to individuals to petition outside national spheres of authority caused important protestations. Post-imperial states viewed the right to petition as unambiguous interference within their “domestic jurisdiction,” a term established by the Minority Treaties themselves. Representatives of the Kingdom of Yugoslavia at the League who, unsurprisingly, were increasingly of Serbian origin, complained throughout the 1920s that minorities would be able to report unproven mistreatments. This in turn, they claimed, would discredit the credibility of the Kingdom and its sovereignty.²⁷⁸ However, other members of the Council did not share this view. At the Conference, the Great Powers had made it clear: as much as self-determination, the protection of minority rights was essential to guarantee international peace. In the years following the conference, the Minority Section and the League’s Council internalised the same rhetoric and used it as a constant reminder. This was a reminder of the importance of the Minority Treaties and their content.

Extant scholarship highlights that non-interference was becoming a prominent norm associated with state sovereignty. As established by the literature, the very bureaucratisation of, and limitations to, petition processes are illustrative examples of this trend.²⁷⁹ In my view though, this argument obscures what I see as another, perhaps more ambiguous, part of the story. It would not be impossible to think, in fact, that the notion of progress associated with the recognition of self-determination claims, with the Minority Treaties and the petition system, was accompanied by restrictive practices towards new states. After all, the Minority Treaties applied to post-imperial states as standards that needed to be achieved for these to be deemed legitimate members of international society. At the Conference, more “mature” members of the Family of Nations explicitly set such standards of civilised behaviour and identity. Orthodox literature on the Minority Treaties, however, presents the work of the League as if it was detached from these standards. This literature stresses the prominence of non-interference in domestic affairs of the new states and the fact that attention was primarily directed to the bureaucratic functioning of the organisation. The point I want to make is that it is unlikely that norms and ideas endorsed just a year or two earlier were just forgotten by the League members. Moreover, many national representatives working at the League were the same statesmen that had participated and set the standards at the Conference. This is quite an important element in the story of the Minority System. I want to suggest that in continuity

²⁷⁸ The Kingdom’s representatives regularly sent out letters to the Minority Section on the matter. S336 LNA, Geneva.

²⁷⁹ Claude, *National Minorities an International Problem*; Cobban, *The Nation State and National Self-Determination*; Fink, “The League of Nations and the Minorities Question.”

with 1919, Great Powers' statesmen at the League continued to believe in the international standards that they set in the Treaties. I also want to suggest in this space that because of the very functioning of the organisation, their expectations counted more, within the League's unequal system, than post-imperial states' views. Post-imperial states in fact would not really have a say on the matter of definition and compliance with standards of legitimate statehood and membership in international society. They were allowed to show their discontent by sending letters to the Minority Section and taking part in discussions of the Council. However, at the League no one was required to take into consideration new states' disagreements.

Post-imperial states were constantly reminded, through "benevolent discussions" and received petitions, that their status as equal sovereigns was dependent upon meeting international expectations about appropriate state behaviour. Moreover, the League was entitled to send missions to the new states to verify the state of affairs. To be sure, measures would only be very rarely taken and even when taken, procedures would be technical and slow. The League, however, left the possibility open that measures could be taken and that these could interfere in the domestic sphere of the new states. If standards of post-imperial statehood and membership in international society were not respected, new states would be reminded that their behaviour was not appropriate, not *civilised* enough. My suggestion is that throughout the 1920s, the possibility of having hierarchies of status between new and old states, between more or less civilised ones was a *leitmotiv* at the League. This would all be an informal process, taking the form of elusive arguments, rather than clear-cut statements. Throughout the 19th century, the Great Powers openly upheld standards of civilisation for appropriate behaviour in international society. Now, the whole civilisational idea was mitigated, in some sense, by the League taking over the task of setting criteria for legitimate statehood and membership in the family of nations. This did not signify that it simply disappeared. I would suggest rather that it became more ambiguous. In this regard, it seems interesting to mention that in order to make sense of petitions, the Minority Section regularly used the accounts of travellers to post-imperial states. These were used to assess the domestic situation of the new states. During their journeys through the Balkans Lord Birkhill and Sir Willoughby Dickinson would note the state of degradation, or, in the words of the former, of "enormous deterioration of European civilisation"²⁸⁰ that characterised Yugoslavia in the immediate post-war years.²⁸¹

²⁸⁰ Robert Birkhill, "Seeds of War", 1922. LNA / UNOG Library, Geneva

This was not very far from pre-1914 prejudices about the area, though Lord Birkhill, for example, concurrently called into question the unequal application of the nationality principle in Central and South-Eastern Europe.²⁸²

The interpretation that I propose might then give us a different idea of the expansion of international society after World War I. In other words, it reveals that the process of expansion was complemented by stratifications of status internationally. We know that explicit hierarchies persisted after the war, as attested by the very existence of the Mandate System. The hierarchy that I have highlighted here though is more ambiguous. It is one between old and new members of international society.²⁸³ While self-determination had become after the war the accepted standard for post-imperial membership in international society, criteria attached to it would serve throughout the 1920s as constant indicators of appropriate conduct. By keeping new states under constant scrutiny, other members of the League, in particular more “mature” ones, would call into question their sovereign equality. The tension between conceptions of equality and practices of hierarchy at the League, I would say, is yet another manifestation of what Keene views as the 20th century coexistence of toleration of diversity and civilisational hierarchies in world order. Keene shows that this coexistence takes a global shape after 1945, as human rights were globalised.²⁸⁴ I would argue that after World War I the coexistence of the two logics, with regards specifically to post-imperial states, can also be uncovered, as membership in international society was enlarged.

Conclusion

After World War I self-determination became the accepted standard for post-imperial statehood and membership within international society. Correlative to the granting of self-determination to Central and South-Eastern European peoples was the endorsement, on their

²⁸¹ Robert Birkhill, *Seeds of War*, written in 1922 reported the mistreatment of minorities; a year later Sir Dickinson wrote a full report after his journey through the Balkans addressed to the League’s Council. R1648, R1649 LNA, Geneva.

²⁸² Sir Birkhill was particularly critical of the Treaty of Trianon, signed between most of the Allies and the Kingdom of Hungary in 1920. For an overview of Birkhill’s critique see: Stephen Gal’s “The Political Adjustment of Carpathian Europe: British Concepts,” *Danubian Review*, vol. 7 no. 7, 1939. Available at: <http://epa.oszk.hu/>

²⁸³ See for a helpful comparison of the minority and mandate systems: Anghie, “Nationalism, Development and the Postcolonial State,” 2006.

²⁸⁴ Keene, *Beyond the Anarchical Society* Grotius, *Colonialism and Order in World Politics*, 2002, 122.

part, of the Minority Treaties. The recognition of new states as equal members of the post-war “family of nations” was made conditional upon their ratification. The treaties, I have argued, delineated the rights and responsibilities attached to self-determination. They instituted international expectations about what good domestic order ought to be within the new, post-imperial states. However, I have shown, they did so on contradictory grounds. While the treaties upheld political equality and equality of rights within the polity, they also promoted hierarchical recognition of national and ethnic groups. For numerous reasons, such contradictions were not a matter of primary concern in Paris and in some respects they were even in conformity with the politics of the time. In the years following the conference, however, they played a part in facilitating the instigation of practices of hierarchical membership within post-imperial states. I have looked specifically at the interesting case of the Kingdom of Yugoslavia. I have shown that clauses on citizenship and minority rights present in the Treaty of Saint-Germain blurred even more the picture of national membership – a picture that was already confused by inherited logics of imperial hierarchy. To the surprise of many, in the name of self-determination and minority recognition, hierarchies were perpetuated domestically.

Notwithstanding how violent these practices became, throughout the 1920s no international action was taken to prevent discrimination in the Kingdom of Yugoslavia, or in any other state. We know that no mechanism of enforcement was attached to the Treaties and this made the documents legally weak. I have suggested, though, that during the 1920s the Minority Treaties played a more elusive role. They functioned as standards of appropriate behaviour and identity for the new states. In Paris, the Great Powers had delineated in the Treaties criteria for post-imperial membership in the society of states. Once membership was acquired, they continued to monitor the new states through the League of Nations, using rights and responsibilities attached to the Treaties as markers of *civilised* behaviour. These were cultural, rather than legal markers. Hence, while acknowledging a norm of non-interference, by their very role the Treaties, later along with the Minority Petition System, made visible that new states were not as equal as more mature ones, particularly if they did not comply with international expectations. I have contended that throughout the 1920s, the League of Nations would constantly remind Yugoslavia and other new states that their status as sovereign equals was dependent upon meeting expectations defined in the Treaties. This, I have argued, reveals that an elusive process of stratification of status *within* international society was taking place concurrently with its first wave of twentieth century expansion. With the universalisation of

self-determination after World War II, things changed. Though as we are about to see, logics of continuity with the past also persisted.

PART TWO

Self-Determination, Decolonisation and Human Rights at the United Nations

Ethnic self-determination, as defined at the Paris Peace Conference, emerged much weakened by the Second World War. It was precisely in Europe, in the areas to which the principle had been carefully directed, that its systematic application coincided with unparalleled catastrophes. At the end of the war, the Allies had to acknowledge a major limit to the principle of self-determination as formulated after World War I. Exclusion and killing had been undertaken in the name of internationally recognised principles. The ethnic norm grafted onto self-determination could clearly be used to support exclusionary practices. In this context of general confusion, one thing seemed to be clear: the idea of self-determination had to be either recognised as an international principle, and therefore reviewed and reformulated, or removed. The latter option soon proved indefensible. In line with its pre-war ideological commitments, the Soviet Union, supported by Yugoslavia and other communist sympathisers, continued to claim that self-determination was a fundamental instrument for minority autonomy and for freedom from imperial oppression. Self-determination was thus included in the first article of the UN Charter, and thereby formalised in international law. However, it was loosely defined (articles 1 and 55), and was conceived more as an aspirational principle than as an immediately and universally applicable right. While asserting the significance of self-determination, the Allies, in effect, put it aside, at least for the immediate future.

Right after the war, at the UN, national delegates were concerned with the codification of universally recognised rights and freedoms protecting individuals beyond national boundaries. The priority in the aftermath of the war was thus the codification of general individual rights, and not the self-government of dependent territories. Self-government was a possibility, but one infrequently achieved. While, as Mary Ann Glendon shows, many at the UN aspired to a “world made new”²⁸⁵ to which the human rights project was central, I suggest that these aspirations were also complemented by older, hierarchical worldviews. Hence, after the war, empire and colonial rule were considered legitimate forms of political

²⁸⁵ I borrow the phrase from her title: Glendon, *A World Made New*.

authority and organisation at the UN. I thus share the view supported by Mark Mazower that in its early years, the UN was characterised by a general pro-empire orientation.²⁸⁶

To be sure, important changes were in motion. Major transformations though were yet to take place. I endorse the argument that Christian Reus-Smit makes: that it was in the 1950s that major transformations occurred, when “Third World”²⁸⁷ countries used the UN as an arena to uphold the cause of self-determination for all colonised peoples. During that decade, post-colonial delegates and, to a lesser extent, local colonial élites, seized the Western-defined language of human rights, which they used to justify their claims to self-determination and independence for all.²⁸⁸ The process was long and complex. In the name of equality and human rights, however, empire was delegitimised against the will of colonial and other western powers. In turn the right of self-determination and human rights were built one upon the other in, what was a mutually constitutive relationship.

In this chapter, I want to argue that through their struggles post-colonial representatives granted fresh meaning to self-determination’s normative components: people, rights and responsibilities. First and foremost, against the will of colonial powers, the principle came to be grounded on universal moral foundations in the name of equality and of its association with human rights. It came to refer to all the peoples on the planet, though its practical application was limited through the principle of *uti possidetis juris* to those under colonial rule. Second, both rights and responsibilities attached to self-determination came to be embedded in the language of human rights. As a result, I suggest that a nexus between human rights and political rights within bounded polities (necessary for the exercise of self-determination) was also formalised. The allocation and respect of political rights was, if not now at least later, to be a matter of international concern. It also redefined conceptions of “good” domestic order for new, “self-determined” states in terms of equality, inclusion and respect of human rights. Struggles at the UN culminated in the passing in 1960 of resolution 1514 by the General Assembly. The resolution demanded the termination of colonialism and thereby the end of the whole constellation of ideas, norms and rules governing colonial empires. Crucially, the resolution upheld the *right* to self-determination as the expression of

²⁸⁶ This is the underlying claim present in Mazower, *No Enchanted Palace*.

²⁸⁷ The term “Third World” was created in 1952 by Alfred Sauvy in an article published in the French magazine *L’observateur*. For a matter of simplicity, I use it slightly anachronistically, to refer to those post-colonial countries members of the UN even before 1952.

²⁸⁸ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 183–189.

peoples' "political will" and "autonomy from external interference," "in the universal respect for, and observance of human rights."²⁸⁹ The standard of legitimate statehood and membership in post-colonial international society was set. It was complemented, however, by norms of both sovereign equality and non-interference that the UN Charter strongly upheld.

Accordingly, this chapter is concerned with the period spanning from 1945 to 1966, - that is, from the end of the war to the General Assembly's adoption in 1966 of the Human Rights Covenants, asserting the right of self-determination in their first articles. They also embody the UN's last, and thus most recent, definition of the idea of self-determination. Examination of this wide historical period should furthermore allow me to locate the idea in broader post-war debates. The chapter is divided into three sections. The first section describes the development of self-determination and human rights at the UN in its early years. In it, I argue that together with the promotion of egalitarian principles such as sovereign equality and human rights, UN practice remained characterised by hierarchical worldviews. In the second section I show how, in the 1950s, post-colonial delegates at the UN managed to use the western defined language of equality and human rights to ground their claims for self-determination. I then briefly discuss how such struggles were echoed within colonial contexts, in particular following the 1955 Bandung Conference. Having identified the process through which self-determination came to be erected as the *universal* standard for membership after empire, the fourth section delineates self-determination's normative components.

1945-1950: Setting the Foundations for a New World Order, Maybe, but for Whom?

Throughout the 1930s and then during World War II, Nazi and Fascist leaders invoked the principle of self-determination, to exclude minorities and perpetrate genocide all over Europe, in the name of a norm of ethnic homogeneity within states. As Eric Hobsbawm has put it, Adolf Hitler was possibly the most "logical Wilsonian nationalist."²⁹⁰ Less widely known in this period was Ante Pavelic's programme, set up in the Balkans to methodically eliminate Serbs, Jews and Gypsies and establish a self-determined, fascist, Croatia.²⁹¹ Ironically, genocide in the name of a right to ethnic self-determination originated precisely in those areas where, in order to guarantee post-war stability and order, Wilson and the peacemakers had

²⁸⁹ A/Res/1514 (XV)

²⁹⁰ Hobsbawm, *Nations and Nationalism since 1780*, 133.

²⁹¹ For more details on Pavelic's ethno-national project see: Ferrara, *Ante Pavelic Il Duce Croato*.

directed the principle in 1919. Less than two decades after the efforts made in Paris to delimit self-determination, the principle was used to justify substantial exclusions and the extensive use of violence.

In 1941, Churchill and Roosevelt drafted the Atlantic Charter, later endorsed by all the Allies. The Charter was constituted of eight points, each containing a different goal for the post-war world. The third point upheld the “respect [of] the right of all peoples to choose the form of government under which they [would] live; and [the] wish to see sovereign rights and self-government restored to those who [had] been forcibly deprived of them.” This formulation, which did not contain the exact phrase “self-determination”, directly revived the hopes of many colonial peoples. These, as Erez Manela has shown, were mainly intellectual and political élites that had never abandoned the idea since after World War I, as well as men fighting during World War II on the side of their respective métropoles. Realising that this might foster hopes that the Allies could not sustain, after the diffusion of the Charter Churchill immediately rectified the point made in the document. Self-determination for all in fact referred, exclusively, he claimed, to “restoring the sovereignty, self-government and national life of the states and nations of Europe under the Nazi yoke, besides providing for any alterations in the territorial boundaries that may have to be made.”²⁹² The recognition of the right of self-determination for all was thus postponed, exposing the imperial imprint of the worldviews of the Allies (and later peacemakers).

Self-determination and empire in the early years of the United Nations

Self-determination was carefully avoided at the Dumbarton Oaks meetings of 1944, which set the foundations for the formation of the United Nations. The confusion surrounding the meaning and scope of self-determination, however, could not be circumvented for too long. On the one hand there was the urgency to redefine the moral foundations of the polity in ethnically blind terms. On the other hand, and more pragmatically, the strong insistence and international visibility of Soviet requests in San Francisco pushed other Allies to accept the inclusion of self-determination in the UN Charter. Hence, in 1945 the dominant assumption among the Allies was that Soviet requests had been satisfied and that self-determination had entered the agenda for a new world order. The meaning and scope of the principle, however,

²⁹² Reported from the House of Commons, 8th vol. Session 1940-41. Quoted in Cassese, *Self-Determination of Peoples*, 37.

were left for further revision, to be undertaken at some other unspecified time. Following article 55 of the UN Charter, self-determination was formulated as a future goal for world order.

The norm of self-determination was introduced in the Charter, and then left aside in further discussions. International attention was turned to post-war reconstruction and to defining the contours of the human rights project after the horrors of the war. This, at least, is what we are largely told.²⁹³ This view, however, seems to obscure what I see is another, more ambiguous, part of the story. In the wake of the war, I have said, self-determination was apprehended at the UN as an aspirational norm.

It is not impossible then to understand this move as reflecting the imperial orientation of the UN in the first years of its existence. Although both individual and sovereign equality was affirmed in the Preamble of the Charter, the general UN position on the colonial question was quite clear. Imperialism was, for the moment, not to be contested. Neta Crawford has shown that the establishment of the Trusteeship System at the UN modified the rightness of colonialism, as human rights and racial equality were also explicitly linked to the “non-self-governing” territories under UN authority.²⁹⁴ She argues that the Trusteeship System did envisage eventual decolonisation of specific territories.²⁹⁵ Indeed, it is true that some viewed the idea of independence for colonial subjects as a possibility. However, in 1945, it was certainly not imminent. After all, to justify colonial rule, numerous British colonial officials also upheld the idea that, one day, colonies might become independent.²⁹⁶ Many, and in particular western and colonial states, simply did not envision self-government after the war. In this sense, the codification of self-determination was not perceived as an urgent matter. After all, European overseas empires still represented a form of legitimate political authority.

²⁹³ See for this argument: Glendon, *A World Made New*; Gordon Lauren, *The Evolution of International Human Rights*; Winter and Prost, *René Cassin and Human Rights From the Great War to the Universal Declaration* | *Twentieth Century European History*.

²⁹⁴ Crawford, *Argument and Change in World Politics Ethics, Decolonization, and Humanitarian Intervention*, 2002, 312–313.

²⁹⁵ *Ibid.*, 311–312.

²⁹⁶ Cooper, *Africa since 1940*, 2002, 49.

This however, is not to say that métropoles were not aware of the power of the self-determination rhetoric for many subject peoples within colonies.²⁹⁷ I would rather suggest that the revolutionary potential of self-determination was in fact immediately downplayed, on its entry in the realm of international law. Article 1 of the Charter loosely framed it around other post-war principles:

The purposes of the United Nations are [...] to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace [...]

In turn, article 73 of the UN Charter reiterated the long-established idea that colonial peoples were not yet ready to achieve self-government after the war but that, one day, they would. The role of colonial powers was restated as fundamental, inasmuch as they brought progress to subject peoples. The benevolent role of “more mature” members of the UN in the name of a “sacred trust” was also confirmed. In the exact wording of the article:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories [...]

The Charter divided “non-self-governing territories” into two categories. The first was a broad category encompassing all colonies and territories that “[had] not yet attained a full measure of self-government.”²⁹⁸ The second included the eleven territories that were formally put under international supervision of the UN. The legitimacy of colonial rule was reaffirmed through the transmission of the League’s Mandate System to the UN Trusteeship complex, in Chapters XII and XIII of the Charter. The UN Trusteeship System was in continuity with the pre-war colonial system. Indeed, the everyday administration of Trusteeship territories was attributed via Chapter XII to France and Britain. The two colonial powers were given the task to “promote the political, economic, social and educational advancement of the inhabitants of trust territories”²⁹⁹, which, following article 22 of the older League’s Covenant, were “not yet able to stand alone in the strenuous conditions of the modern world.”

²⁹⁷ See: Manela, *The Wilsonian Moment*, 2007. In his book Manela shows precisely how self-determination rhetoric navigated within colonial contexts and fostered hopes of independence in the interwar period.

²⁹⁸ Article 73, UN Charter

²⁹⁹ Article 76, UN Charter

However, differently from the Mandate System, individuals living within these territories were granted the right to petition directly to the UN. This was a radical change that did preoccupy both France and Britain. As indicated by William Bain, France made the point quite clearly that “nothing under consideration by the Trusteeship Committee shall authorise the United Nations to intervene in matters which [were] essentially within the domestic jurisdiction of any state.”³⁰⁰ Petitions would thus be studied by the Trusteeship Council, set up in 1945 as one of the core organs of the United Nations. Every two years, the Council sent international missions to assess whether or not a territory was ready for self-government. In two cases, special missions were sent to colonial territories to verify the allegations of the claimants.³⁰¹ Whereas over time petitioning became an increasingly exercised practice, in the immediate post-war years colonial powers were essentially in charge of all domains.³⁰² Between 1952 and 1964 the examination of petitions was further devolved to a Standing Committee. Many however, and the Soviet delegation in particular, criticised the establishment of the Committee, which they viewed as a means to postpone the study of petitions and further bureaucratised the system as a whole.³⁰³

It is interesting to note the way in which, today, the United Nations describes the work of the Trusteeship Council from 1945. The “basic objective” of the Trusteeship System is described as “to promote the political, economic, and social advancement of the Territories and their development towards self-government and self-determination,” as well as “[encouraging] the respect for human rights and fundamental freedoms and recognition of the interdependence of peoples of the world.” The Council is defined as the organ in charge of supervising “the administration of Trust Territories and to ensure that Governments responsible for their administration took adequate steps to prepare them for the achievement of the Charter goals.”³⁰⁴ Whether in the minds of colonial powers’ delegates the aim was achievement of the Charter goals or a state of progress, I believe, is a matter that remains open to interpretation. In the aftermath of the war colonial powers’ did hold back *self-determination for all*. They did so in the name of a state of advancement that colonial people had allegedly not reached. Self-determination was not to be recognised for those people not advanced enough to meet international requirements for independent statehood. The definition of these requirements

³⁰⁰ June 1945 Bain, *Between Anarchy and Society*, 2003, 123.

³⁰¹ Schermers and Blokker, *International Institutional Law*, 903.

³⁰² S – 0504 – 0036, UNA

³⁰³ Thullen, *Problems of the Trusteeship System*, 77.

³⁰⁴ All these statements are available online at: <http://www.un.org/en/decolonization/its.shtml>

and the stage at which peoples or territories would be regarded as having reached them, however, was certainly not a matter open for debate. Empire was thus reaffirmed in the Trusteeship system, but, as William Bain has shown in a complex, possibly diluted form,³⁰⁵ that soon would be called into question.

Already at the third meeting of the Council the questions had been raised by the delegates of Thailand and El Salvador: should indigenous peoples from trust territories be able to participate in the work of the Trusteeship Council? Could they be granted a right to speak, perhaps without the right to vote, in Trusteeship decisions, given that these directly concerned them? Britain and France drastically opposed these views, claiming that the composition of the Council had already been defined in article 86 of the Charter.³⁰⁶ The Charter stated that the Council was to consist of the UN members that administered trust territories, the five permanent members of the Security Council, and “as many other non-administering members as needed to equalise the number of administering and non-administering members” elected by the General Assembly on a three year-basis.³⁰⁷ Accordingly, the Great Powers neatly avoided clear answers to these questions. However, as long as the work of the Council continued, the line of division between France and Britain on the one hand, and non-western delegates on the other, became increasingly obvious. If the Trusteeship system had been established in the interest of colonial subjects, and if the principle of equality of rights for all men and women was upheld in the Charter, why were indigenous peoples from trust territories excluded from those processes that precisely involved them? As much as in other UN bodies, the inconsistencies of the 1945 formulations for a new post-war international order were becoming increasingly evident.

Between hierarchy and equality at the UN

In his book *The Last Utopia*, Samuel Moyn suggests that “human rights entered global rhetoric in a kind of hydraulic relationship with self-determination: to the extent that one appeared, and progressed, the other declined, or even disappeared.”³⁰⁸ I disagree with Moyn’s use of this argument, made on a broad historical scale to convince his reader that

³⁰⁵ Bain, *Between Anarchy and Society*, 2003, 124.

³⁰⁶ S-0504-0038, UNA

³⁰⁷ Article 86, UN Charter

³⁰⁸ Moyn, *The Last Utopia*, 88.

decolonisation as a whole was not a human rights movement; that the politics of self-determination and of human rights were distinct projects. Overall, this chapter is engaged in demonstrating precisely the opposite view, namely that self-determination and human rights after 1948 mutually constituted and reinforced each other. However, Moyn's statement appears to be well suited to an understanding of the prevalent mentality and justifications given by Great Powers to avoid recognising self-determination for all. In the early years of the UN, the effort was presented as one to frame human rights. This was done in the name of alleged liberal ideas of peace, justice and equality. Who would want to disturb this project and consider instead self-determination?

In the final version of the Universal Declaration of Human Rights, as proclaimed in 1948, self-determination was not once mentioned. The delegates of socialist and communist states that had argued in favour of the inclusion of a self-determination clause during the negotiation period abstained from voting on the passing of the Declaration before the General Assembly. Six out of the total eight abstentions were from socialist states, the two others being from Saudi Arabia and the Union of South Africa.³⁰⁹ Not one vote went against the final draft: forty-eight were in favour. The Declaration was adopted. In 1947 the Commission on Human Rights had decided, however, to create two separate human rights tools: a Universal Declaration and a Covenant "which [would] impose far reaching obligations on acceding states and which accordingly [demanded] detailed and precise drafting appropriate to a legal document."³¹⁰ In 1948, negotiations on the latter had not started. Major discussions were yet to come.

Following the delineation of the human rights enterprise and the denunciation of Hitler's racism, UN delegates from colonial powers found themselves in fact surrounded by a growing inconsistency. How was it possible to codify universal rights for all, denounce Hitler's racist policies, while at the same time justifying the systematic denial of political and civil rights to colonial people, along a racial and sometimes ethnic line, "domestically?"³¹¹ René Cassin, French delegate at the UN and champion of the human rights project, was explicitly against

³⁰⁹ SO 221/9 (02) UN archives, New York (UNA). The eight abstentions were from: the Byelorussian Soviet Republic; Czechoslovakia; Poland; Saudi Arabia; the Soviet Union; the Ukrainian Soviet Republic; the Union of South Africa; Yugoslavia.

³¹⁰ Statement by a representative of New Zealand made in a memorandum to the UN Secretary-General, June 1948 SOA 317/1/01/ (1), UNA.

³¹¹ I use the term domestic and domestically in inverted commas when referring to the conception held by colonial powers that colonial territories were the overseas continuation of their national territories.

the allocation of those rights to colonial peoples. Métropoles had attributed to themselves the superior task of promoting the well-being of non-self-governing populations; explicit discrimination was seen as the obvious means to achieve such development.³¹² For years, Cassin repeatedly claimed that subject peoples were not yet ready for human rights – the same argument used to deny self-determination. As indicated by Gordon Lauren, though, the very project of human rights codification concurrently contributed to making colonial ideologies less self-evident. The project “created a troublesome mirror that reflected [colonial powers’] own abuses on rights (...) and potentially threatened their own power and claims to national sovereignty.”³¹³

I argue that major inconsistencies at the UN derived from an inadequacy in dealing with the question of equality within the organisation. Colonial powers continued to uphold, although in transformed ways, hierarchical worldviews. However, these were in contrast with conceptions of equality (of both individuals and sovereign states) endorsed in official UN documents. Such explicitly opposing visions could not hold together for too long. Why, despite international codifications, was each individual not supposed to have equal rights? This question started to be addressed in relation to the issue of self-determination as well:³¹⁴ why, even if article one of the Charter stated that self-determination was for all, could this not happen in practice? The idea that métropoles could decide for colonial people in an unconditional manner increasingly lost ground. Certainly, I do not claim that this occurred because colonial powers suddenly realised their long-standing moral failings after the adoption of the Declaration of Human Rights. As I see it, this delegitimation was rather the result of the presence at the UN of former colonies which, in the inter-war years, had been granted independence. In the name of sovereign equality as the base of UN membership, they were allowed to join the organisation in 1945. This signified that the UN was no longer, as the League of Nations had been, an exclusive organisation controlled by the Great Powers. The UN was in principle the matter of all those deemed sovereign equals.

³¹² From various official records of the Third Committee (under the General Assembly). See in particular meetings from V and VI sessions. A/V/1950 and A/VI/1960. UNOG archives.

³¹³ Gordon Lauren, *The Evolution of International Human Rights*, 155.

³¹⁴ The point was made at the 309th meeting of the 5th session of the Third Committee in 1950 by Baroody, the Saudi Arabia delegate. Official Records of the Third Committee, UNOG archives.

Post-Colonial Struggles at the UN: Self-Determination, Human Rights and the Delegitimation of Empire in the 1950s

As a result of this inclusive understanding of membership within an international organisation, representatives of former colonies that had acquired independence in the inter-war period had the same right to speak and vote as the rest of the UN members. Among them were Egypt, Iraq, Lebanon, Saudi Arabia and Syria, later followed by India and Pakistan (1947), accompanied by an array of Latin American states that had gained independence in the 18th and 19th centuries. It was this formal equality that allowed post-colonial states to use the UN as a platform for discussion. Post-colonial countries turned the UN human rights and colonial bodies formed immediately after the war into channels for major transformations of the international system. Such bodies were mainly the Third Committee, the Commission on Human Rights and the Trusteeship Council.

Over the years, meeting after meeting, post-colonial delegates seized the 1948 western-defined rhetoric of human rights, expanded it and used it to formulate persuasive claims for equality. In turn, this language of rights was used to ground self-determination in pre-existing values, and to further justify claims to independence. Reus-Smit is thus correct that “post-colonial states successfully grafted the right to self-determination to emergent international human rights norms.”³¹⁵ Self-determination was justified on universal grounds in the name of equality and human rights and, concurrently, colonial rule was formally delegitimised. This, I would add, brought a fundamental political and moral shift in the meaning of self-determination, as it became both a *continuing right* (without respect for self-determination there can be no respect for other fundamental rights and freedoms) and the *universal norm* for statehood and membership in post-colonial international society.

In spite of differences, both Christian Reus-Smit and Roland Burke support the view that the 1950s claims to self-determination, as they originated at the UN and were internalised by several anti-colonial movements within empires, were attached to human rights. This standpoint, as already been said, is opposed to the views of historians such as Samuel Moyn, and Brad Simpson who deny, because of their narrower understanding of human rights politics, a constitutive relation between the 1950s anti-colonial movements and human rights

³¹⁵ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 201.

ideas.³¹⁶ The latter contend that the use of human rights language by “Third World” representatives was occasional, and nothing more than what they see as a “mere” rhetorical tool. Contrarily to this view, Reus-Smit makes the point that rhetoric “is a purposive social practice,” one that “actors employ deliberately and artfully because successful rhetoric is politically enabling.”³¹⁷ In other words, post-colonial representatives within and outside the UN found in the language of human rights a major tool of collective empowerment and legitimization. In it, they managed to ground, visibly and legitimately, first their claims to equality and then to self-determination (and thereby sovereign equality for the new states.)

It should be noted here that whereas I establish a connexion between self-determination and (individual) human rights, I do not seek to find, in my interpretation, an answer to whether self-determination was ultimately framed as to refer to individual, rather than collective holders of rights. This is an important disclaimer given the propensity in scholarly work to qualify self-determination in one or the other terms.³¹⁸ It is my sense, however, that nowhere in UN documents can a clear position be identified (and certainly not until the 1990s).³¹⁹ During the Covenant negotiations several actors at the UN held the explicit view that self-determination was to be understood as a collective right. Soviet delegates, for example, talked about a “national” self-determination, though others who held the view that self-determination was collective did not refer to it as national, but as “self-determination of people,” such as was often the case of the Yugoslav delegates. Others, in turn, saw it as a tool of individual empowerment and others, possibly, as a human right. Afghani Foreign Minister Sardar Naim, for instance, claimed in 1955 that, “our conception of independence is not different in any respect from our conception of the observance of fundamental human rights, especially the right of peoples and nations to self-determination” – though, even there, whether self-determination was equated with an individual human right remains a matter of interpretation.³²⁰

³¹⁶ Cf. Chapter 1 for further details on their positions and differences.

³¹⁷ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 175.

³¹⁸ Suffice to refer to the debate among international historians Samuel Moyn and Brad Simpson, versus Roland Burke’s conception discussed in Chapter 1.

³¹⁹ Even then, the same dilemma persisted, as epitomised by the contrast between international practice (e.g. international recognition of “ethnic” self-determination in the Balkans) and international law (e.g. Lubicon dispute before the UN Commission on Human Rights where self-determination emerged as an individual right presupposing a collective empowerment, cf. *Lubicon Lake Band vs. Canada*).

³²⁰ Quoted in Burke, *Decolonization and the Evolution of International Human Rights*, 2010, 26 who sympathises with the view that self-determination became a human right in the decolonisation phase.

Accordingly, I first present “Third World” struggles. I do so in the form of an outline, as both Reus-Smit and Burke have already advanced the arguments in detail in their respective works.³²¹ I then discuss how international discussions were echoed within several colonial contexts, speeding up after the Bandung conference the process of decolonisation. After Bandung, numerous colonised élites referred to a common international language (though, certainly, interpreted differently according to specific ideologies and beliefs) in their domestic struggles against colonial rulers. In spite of that, the endorsement of this language in the decolonisation period, as I shall argue in the next chapter, was not translated into the domestic practice of post-colonial states.

Post-colonial struggles at the UN

It was within the two principal human rights bodies that discussions began. One was the Commission on Human Rights, created in 1946 as a subsidiary body of the ECOSOC. Following article 68 of the UN Charter, the Commission was conceived as a political forum for discussion on the promotion and protection of human rights. From its creation, and for the following decade, it was principally used to elaborate treaties and make recommendations to the General Assembly. The other was the Third Committee, the same organ in which the drafting of the 1948 Universal Declaration took place. Formed in 1945 as one of the six main committees of the General Assembly, it had a similar structure to the Assembly, formally granting equal representation to all UN members. The Third Committee was in charge of drafting major documents on social, humanitarian, cultural and human rights issues. These included recommendations and resolutions. In contrast to the Trusteeship Council, here post-colonial states could equally express their voice.

After the endorsement in 1948 of the Declaration of Human Rights, within the Third Committee the Soviet Union, Communist and post-colonial delegates found themselves united in claiming equal rights, recognition and self-determination for those oppressed groups whose human rights and fundamental freedoms were not respected.³²² These were to be integrated in the future Covenant on Human Rights that the Committee would negotiate. For more than a year, Soviet and Egyptian delegates insisted on the need to expand the scope of

³²¹ Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001; Burke, *Decolonization and the Evolution of International Human Rights*, 2010; Reus-Smit, *Individual Rights and the Making of the International System*, 2013.

³²² Official records of the Commission (E/1371 E/CN.4 355), UNOG archives.

the recently formed sub-commission on prevention of discrimination and protection of minorities, to all discriminated racial, national, religious and linguistic minorities. These delegates thus argued for the expansion of rights recognition, to also include peoples of Trust and non-self-governing territories. It became soon clear that “Third World” and Soviet delegates did not refer to the same categories of people or rights. At the 5th session of the Commission, in spring 1949, the Soviet delegation proposed the insertion of an article in the draft Covenant, bringing together the recognition of minorities, their rights along with the principle of national (thus collective) self-determination:

“Every people and every nation shall have the right to national self-determination. States which have responsibilities for the administration of non-self-governing territories shall promote the fulfilment of this right [...] The state shall ensure to national minorities the right to use their native tongue, and to possess their national schools and libraries, [...]”³²³

While the article highlighted the quest for equal recognition of autonomy and freedom for all, in line with their ideological commitment Soviet claims implied that self-determination was meant for specific “national minorities.” Post-colonial delegates, on the other hand, naturally viewed oppressed peoples as colonised groups within imperial systems, in search of recognition and political equality. The Soviet suggestion stressed also the role of cultural and social rights as collectively understood, over individual and political ones. Yet, as the Indian delegation later claimed, it was political rights that mattered for those oppressed peoples who sought to see their will recognised in the institution of a legitimate government. Indian delegates claimed that these were the rights that could not be implemented if the people to whom they were granted lived under despotic or autocratic regimes.³²⁴

1950 thus marked the start of the use by post-colonial delegates of human rights language as “revolutionary discourses,” to challenge hegemonic understandings of world order.³²⁵ Debates increasingly took place on the need to expand rights to all, and to ground expressions of the free and popular will of the people within notions of political equality and equality of rights. At the end of the year, the General Assembly adopted Resolution 421 D (V). The resolution called for the ECOSOC to request the Commission on Human Rights to study ways and means that would ensure the rights of peoples and nations to self-determination. It also

³²³ Report of the 5th session of the Commission, May-June 1949. ECOSOC Official records, E/1371 E/ CN.4/ 355. UNOG Archives

³²⁴ Report of the 7th session of the Commission, May 1951. ECOSOC Official records, E/CN.4/ 640. UNOG Archives

³²⁵ Reus-Smit, “Human Rights in a Global Ecumene,” 1212.

asked for the elaboration of recommendations for consideration by the General Assembly in its sixth session, the following year. In adopting resolution 421, as Mexican delegate Raul Noriega stated during the 310th meeting of the Third Committee, the General Assembly had recognised the competence of the Committee and the Commission to deal with self-determination in non-dependent territories.³²⁶ The *right of* self-determination for colonies was now at the UN a matter open for discussion. Hence, during a whole year, in 1951, post-colonial delegates involved in the drafting of the UN Covenant on human rights insisted on the inclusion of self-determination in the document. Arab delegates were possibly those supporting the move with most conviction. Accordingly, Lebanese representative Charles Malik claimed that the more people progressed towards self-determination, the more they would be likely to respect human rights, and vice-versa.³²⁷

Such genuine enthusiasm was, however, countered not only by European colonial powers but also by other western states. In a 1952 memorandum addressed to the Secretary General, Canada argued that it was impossible to include a collective entitlement in a Covenant on individual rights.³²⁸ The other argument that western states used against the recognition of self-determination was embedded in the so-called “colonial clause”. Western states suggested that a clause of exemption should be added in the future Covenant to exclude its application to non-self-governing territories. Referring to stages of advancement and progress, colonial peoples were still not ready for full self-government. Moreover, as noted by the Belgian delegate:

“[Human] rights presupposed a high degree of civilisation (and) were often incompatible with the ideas of people who had not reached a high degree of development. By imposing those rules on them at once, one ran the risk of destroying the very basis of their society. It would be an attempt to lead them abruptly to the point which the civilised nations of today had only reached after a lengthy period of development”³²⁹

The colonial clause was in the end rejected - resolution 422, calling for the universal application of the future human rights tool. It was also decided that the latter would be split into two Covenants. One dealt with civil and political rights, which India and Greece thought had absolute priority; the other focussed on economic, social and cultural rights.

³²⁶ 5th session of the Third Committee, 1950-1951. Official records (under General Assembly), UNOG Archives.

³²⁷ Burke, *Decolonization and the Evolution of International Human Rights*, 2010, 42.

³²⁸ Memorandum from the Canadian delegation at the Mission on human rights to the secretary general, 2 April 1952. E/2256 E/ CN.4/669, UNOG Archives.

³²⁹ A/C.3/SR.292 (1950). Quoted in Moyn, *The Last Utopia*, 96.

Adopted with forty votes in favour, fourteen against (Australia, Belgium, Canada, Denmark, France, Iceland, Luxembourg, Netherlands, New Zealand, Norway, Sweden, South Africa, United Kingdom, United States) and six abstentions, it was resolution 637 that legally highlighted the incompatibility between colonial rule and ideas about self-determination and human rights. Via that resolution, four major points were articulated. First, self-determination was to be the prerequisite for full enjoyment of fundamental human rights and freedoms. Second, decolonisation was an international matter. Third, and although this was not framed as a legal obligation, the resolution encouraged colonial powers to hasten the procedure of access to self-government for colonies. Fourth, it affirmed the importance of political rights for fulfilling the will of the people.

Crucially for us, these points indicate that the resolution reiterated the democratic aspirations to self-determination at the basis of the concept. Moreover, it delineated the exercise of political rights as a matter of wider, international concern. While the allocation of political rights -along with other citizenship rights was – and, to be sure, still is – a sovereign prerogative, resolution 637 stated that the right to have plebiscites in colonial territories should facilitate self-determination. In order to “satisfy their political aspirations,” the resolution advanced that “democratic means to prepare local populations for self-government and to ensure direct participation of indigenous people in legislative and executive bodies” had to be established.³³⁰ This certainly did not equate with independence, but the resolution underlined the need for equal grounds in the allocation and exercise of political rights. Just as after World War I, political equality and equality of rights was therefore set again internationally as the ground for the exercise of the right of self-determination.

In 1952, two major criteria existed to assess whether a territory had or had not attained a full measure of self-government. The first one was “political advancement”, a phrase that interestingly continued to appear in the works and reports of the Trusteeship Council until the end of the 1950s. More often than not, though, western states used it to insinuate that colonial people had not attained yet an adequate stage of development to be granted self-government.³³¹ The second was the “opinion of people”.³³² Resolution 637 stated that this

³³⁰ A/Res/637 (VII) [A, B]

³³¹ I ground this statement on an overview of numerous reports sent to the Trusteeship Council in the period between 1946 and 1959: DAG 5/ 2-1-1, UNA.

should be facilitated by the right to have plebiscites in colonial territories and by other democratic means. The matter remained however, as to how this opinion could be measured if, at the same time, colonial authorities regularly denied to colonial peoples access to full membership within the political community, and therefore to political rights to express their views. Resolution 644, also adopted in 1952, sought to put an end to such discriminatory practices. It recommended the “abolition in those Territories of discriminatory laws and practices contrary to the principles of the Charter and the Universal Declaration of Human Rights”. It also asked for the “examination” (rather than abolition) by colonial authorities of those laws differentiating citizens from non-citizens on racial and religious grounds.³³³ In so doing, it made a major contribution as to the definition of what could be considered rightful distinctions among population groups.

The exercise and allocation of rights within bounded polities was turned into an issue of potential wider concern. Who was a citizen and who was not, who could vote and who could not, who could be represented and who could not, were matters no longer to be grounded on systems of unequal treatment. Concurrently with the progressive delegitimation of institutionalised systems of unequal rights, liberal ideas of equality and inclusion, as defined after the war within the frame of human rights, gained greater resonance. As Reus-Smit argues, post-colonial delegates at the UN managed to associate western-defined liberal ideas of human rights with the right of self-determination for non-western, colonial peoples. Formal recognition of political equality at the UN thus represented a major tool of collective empowerment and legitimation of domestic, anti-imperialist claims. The exercise of popular sovereignty domestically, and thus by association also within colonial territories, in the name of self-determination, was “backed up” by internationally recognised human rights. This operation was accomplished in November 1955, when, after several years of discussions, article 1, as it had been already formulated in 1952, was included in the draft Covenants:

Article 1. 1/ All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2/ All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

³³² Private note from the Greek delegate Stavropoulos to the Secretary General U Thant. 29th June 1962. A/3775. UNOG Archives.

³³³ A/Res/644 (VII)

3/ The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Post-colonial delegates thus constituted themselves as moral entrepreneurs, who, during the Conference, shaped in various ways human rights ideas, along with the norm of self-determination. This process as a whole played a part in creating a collective, “Third World” identity. This was a unique form of affiliation, which UN delegates from newly formed states, but also political groups and intellectual élites within colonies, could identify with, and invoke. In turn, the reinterpretation of both human rights rhetoric and the idea of self-determination represented a challenge to western powers and, to a certain extent, to the communist bloc.

The empowerment of subject peoples within colonies was crystallised in the years following the 1955 Bandung Conference, when such “Third World” identity took form. The Conference represented a major moment of realisation of common interests for non-western states and peoples. From then on, it was thought, these could be consistently invoked, along with a shared, but perhaps also increasingly elusive, identity. The realisation of a common identity granted a greater negotiating power to post-colonial states at the UN. The Conference in part restated liberal principles governing the United Nations, but in so doing, it also formalised human rights and self-determination for non-western territories, though with a different substance. By this, I do not mean that Bandung represented a liberal gathering but, rather, that “Third World” élites managed to appropriate a certain international language that they reinterpreted and used to justify their claims. The identity of the “Third World” was enthusiastically delineated as democratic and “non-aligned”³³⁴ - although the official movement of the Non-Aligned was forged in Belgrade in 1961. At the conference, the importance of self-determination and (equal) exercise of political rights was also reiterated. In the words of Charles Malik:

“ What are the ultimate fundamental human rights? For the Communists, these rights are for the most part social and economic rights. But for some of the rest of us the ultimate human rights that should now be guaranteed by the world and by the diverse nations are the personal, legal, *political rights to freedom – to freedom of thought, to freedom of expression and certainly of free elections* (my emphasis). [...] To the communists, in the present context of this conference freedom meant the liberation of the various nations and peoples of Asia and Africa from foreign Western rule. But to some of us – while this certainly belongs to the notion of freedom, freedom was much larger and

³³⁴ Note written for the Cabinet of External Affairs on the impact of the Conference. Canberra, 30th May 1955. Item number 94/28 [13]. Document available online, National Archives of Australia.

deeper than liberation from foreign rule. To us freedom meant freedom of mind, freedom of thought, freedom of press, freedom to criticise, to judge for yourself, freedom in short, to be the full human being.”³³⁵

Post-colonial interests, as they emerged during and after Bandung, were to bring together human rights with a deeply democratic idea of self-determination.³³⁶ The fight for one was made coterminous with the fight for the other.³³⁷ This nexus, I suggest, came to delineate the standard of self-determination internationally, as endorsed in 1960 through Resolution 1514 on the Granting of Independence to Colonial People. This inevitably shaped international expectations that would have accompanied it. Before turning to these, though, let us briefly consider what in the second half of the 1950s was the general atmosphere within colonial territories.

After Bandung: accelerating decolonisation from the inside

Although rarely discussed in scholarly accounts on self-determination, the Bandung moment was pivotal in hastening the adoption of resolution 1514, decolonisation and the demise of imperialism.³³⁸ Twenty-nine national delegations were present: six from Africa, the continent being still predominantly under colonial rule, and all the others from Asia. These countries represented nearly 1.5 billion people on the planet. During only a week of discussions and meetings, ideas about human rights, equality and self-determination were articulated around the constitution of a common “Third World” identity. As Baron Casey, at the time minister for Australian external relations, stated a month after the Conference, the Bandung moment “created a common feeling” for Asian and African peoples as a whole.³³⁹ This identity was explicitly defined around a common interest: independence for people still under colonial rule. Moreover, the Conference defined the “Third World” as an indivisible whole, from oppressed peoples to those already independent. Bandung therefore played the role of major “platform”³⁴⁰ for diffusion of a “Third World” identity and of its cognate interests within

³³⁵ “Talk given by Dr Malik at Luncheon”, Canberra 28th April 1955. Department of External Affairs, Australia. Available online, National Archives of Australia A 1838 / 278, 3002/1 Pr 5, File No. 156/3/3.

³³⁶ Final Communiqué of the Bandung Conference, 24th April 1955.

³³⁷ Burke, *Decolonization and the Evolution of International Human Rights*, 2010, 26.

³³⁸ A notable exception that confirms the rule is Burke, *Decolonization and the Evolution of International Human Rights*, 2010.

³³⁹ Note written for the Cabinet of External Affairs on the impact of the Conference. Canberra, 30th May 1955. Item number 94/28 [13]. Document available online, National Archives of Australia.

³⁴⁰ Burke, *Decolonization and the Evolution of International Human Rights*, 2010, 21.

colonial contexts. Intellectual élites and political groups in colonial territories were to be the vehicles of that diffusion.

Within colonies, the identity and ideology conveyed in what came to be known as the “spirit of Bandung” fitted well with the disillusion of intellectual élites and political groups increasingly sensitive to unequal systems of rights allocation. As Erez Manela has argued, in the interwar period numerous politicians, intellectuals and civil groups from colonial territories had adopted Wilson’s rhetoric of self-determination to ground their aspirations.³⁴¹ After Bandung, such rhetoric was reinforced, often associated with invocations of human rights, and enthusiastically employed by the leaders of colonised peoples to formulate their demands for independence such as in the case of the Front of National Liberation in Algeria. Recounting what Nasser told Tito in 1960, Arne Westad writes that, “the future of the territories still under colonial control was first and foremost an issue for the Third World itself (...) it was third world solidarity with the local resistance that in the end would force the imperialists out.”³⁴² “Domestically,” discourses on self-determination found their direct equivalents within international debates and norms. The idea of self-determination as associated to human rights became a crucial tool to challenge imperial systems, both from the inside and from the outside. Westad tells us “that even in Europe [*in particular within socialist circles*] the discourse about colonialism and state control began to shift from its previous emphasis over power, rationality and progress, to a new underlining of self-determination and human rights.”³⁴³

That said, the scope of subject peoples’ mobilisations within all colonial contexts should not be overgeneralised. While in colonial Asia ideas about self-determination were rather widespread, this was not always the case for colonial Africa. In Africa, those socialised with Bandung’s ideas were limited and well-defined groups: intellectual and political élites, political parties, unions, associations and emerging NGOs. In a few cases these actors managed to spread widely ideas associated with the “Bandung spirit” and increase political mobilisation, as, for instance, in Algeria and Kenya. More often than not however, ideas about human rights and self-determination remained limited to small, urban but visible sections of colonial populations that actively mobilised against colonial rule. These were

³⁴¹ Manela, *The Wilsonian Moment*, 2007, 221.

³⁴² Westad, *The Global Cold War*, 105.

³⁴³ Ibid.

strongly influenced by socialist circles and intellectual diasporas living in Europe.³⁴⁴ As Reus-Smit has argued, within colonies, self-determination and human rights claims constituted a revolutionary rhetoric within environments defined by hierarchical norms.³⁴⁵ In many circumstances, this rhetoric was marginal. However, appealing to internationally recognised principles empowered and granted visibility to domestic populations. In parallel, post-colonial delegates at the UN worked as the mediators of subject peoples' interests, to grant their growing claims international recognition. Colonial authorities could no longer behave as they liked towards colonial people, in a totally uncontested manner as France, we have seen, claimed.

In several circumstances the process of delegitimation of colonial rule led to the start of peaceful decolonisation via the organisation of plebiscites before the 1960 resolution 1514, granting independence to colonial peoples. This, in particular, was the case for Trust Territories. Emblematically, Ghana was the first to gain independence from the British Empire in 1957 – even though independence was first acquired through an Assembly vote in Britain and only later did it become a republic through plebiscite. The conduct of the plebiscites within Trust territories fell primarily under the responsibility of respective administrative authorities, although they were officially organised under UN supervision.³⁴⁶ It is hard to tell if the decision by colonial powers to organise referenda was taken with the intent of attributing autonomy to those territories that anyway already had a semi-autonomous status, so as to better maintain other colonial possessions; or whether it was because decolonisation was actually set in motion. One thing is, however, clear: while plebiscites were intended initially for Trust Territories, they came to constitute a precedent to which all colonial peoples could appeal. Up until 1960 colonial authorities generally contained those appeals in other “non-self governing territories,” continuing to describe subject peoples' protests as matters of domestic concern. In a number of instances, heavy repression on the side of colonial powers exacerbated both subject peoples' claims and their political struggles, leading to the use of violence on both sides.

³⁴⁴ Duara, *Decolonization*, 2–3.

³⁴⁵ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 201.

³⁴⁶ Chief Cabinet EOSG/ OSG Missions and Commissions files 1949-1973 S-0279-0024, UNA

Domestically, colonial powers justified authoritarian practices by arguing that colonial peoples could not rise up against those same authorities that were so generously participating in their development. If oppression was the means to be used, it was for their good. On one side, French authorities employed the assimilationist argument, grounded on their highly colonial policies. All colonial peoples would become, one day, fully-fledged French citizens. Why would they want to be different, by struggling against colonial rule? In the British and Belgian cases instead, the argument used was that the day would come when all colonies would be able to determine themselves. Colonial people need not hasten the process, as they were not yet ready for independence. However, the colonial powers' argument clashed with the changing international environment. At the UN, as we have seen, colonialism had clearly become a matter of international preoccupation, and arguments about the benevolent role of colonial powers could hardly be explicitly held without causing protestation among post-colonial delegates.

In practice, though, the louder the claims to self-determination and equality were, the more colonial authorities continued repressive and violent measures. In three emblematic post-World War II cases, colonial repression against self-determination movements led to states of war between colonised and coloniser parties: Indochina (1946-1954), Kenya (1952-1960) and Algeria (1954-1962). The use of extensive violence against mobilised subject peoples asking for equal rights and self-determination revealed the discriminatory and repressive nature of colonial regimes. This I suggest played a part in speeding up the UN decision in 1960, to formally bring colonial rule to an end. In each of these three cases, mobilised peoples were organised in movements of liberation widely supported by the rest of the colonised populations: the Viet Minh in Indochina, the Mau-Mau in Kenya and the Armée de Libération Nationale (ALN) – Front de Libération Nationale (FLN) in Algeria.

These three cases became internationally visible precisely because domestic populations consistently and widely reacted to colonial oppression. When their claims to self-determination and equal respect of individual rights were restrained, subject peoples started using violence themselves, organising their own armies and insurgency groups. Historically colonial powers had always managed to repress insurrections within empires. In the 1950s they could no longer do so legitimately. Subject peoples would otherwise appeal to internationally codified principles such as human rights, to assert their increasingly “just

cause” of self-determination, both domestically and internationally.³⁴⁷ It was in this context that self-determination was erected as the universal standard for post-colonial statehood and membership in international society. After years of struggle, at the dawn of 1960 many hopes and expectations were thus attached to the idea of self-determination.

The Standard is Set! Self-Determination in the Post-1960 World Order

At the United Nations, after the inclusion of article 1 in the drafts of the Covenants in 1955, discussions on the role of self-determination were never-ending: which were the rightful units of self-determination? Which areas or peoples were to enjoy it? Which matters did it govern? Which were the methods to reach self-determination? No comprehensive answers were really provided. Instead, following the 1955 Hungarian uprising, seeking perhaps to detract attention from colonial contexts and to propound an anti-communist critique, colonial powers started to claim that imperialism existed in Europe. This was the region where self-determination therefore had to be applied first. Attention would be devoted to overseas territories subsequently. Because of these circumstances detracting attention from colonial contexts, post-colonial delegates insisted on setting up two UN ad hoc commissions on self-determination. The purpose of self-determination, they claimed, needed clarification. The first commission was to survey the status of the right of permanent sovereignty over the natural wealth and resources of the peoples and nations of the world. Chile had in fact successfully managed to include, in 1952, a clause on the matter in article 1 of the future Covenants. The second commission was to conduct a study on the best way to implement self-determination. However, while the first was set up in 1958, the second “never saw the light of day, with debate repeatedly postponed.”³⁴⁸

This though did not mean that post-colonial struggles at the UN were over. In 1957, resolution 1188 was passed, calling for the respect of self-determination and equal rights for all, in the name of friendly relations among states. The resolution, directed to European colonial powers, was bolstered three years later by resolution 1514, also known as the Declaration on the Granting of Independence to Colonial Peoples. In 1960, the resolution was voted on, with 89 for, none against and nine abstentions (Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, United States).

³⁴⁷ Pomerance, *Self-Determination in Law and Practice*, 48.

³⁴⁸ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 189.

Crucially, the declaration transformed self-determination into a legal imperative directed to peoples wishing to set themselves free from imperial rule. More broadly, resolution 1514 embodied a whole decade of discussions that had directly called into question colonial rule. This clearly appeared in the results of the vote. At the start of the 1950s colonial powers generally voted against any provision that would either undermine them or empower colonial peoples. In 1960, along with other western states, they all abstained from voting. Both the resolution and its vote indicated a fundamental shift in the conception of the architecture of the international system.³⁴⁹

Resolution 1514 grounded the *right to* self-determination on moral universal foundations. The resolution defined self-determination as the shared norm for post-colonial statehood and membership within international society, granting fresh substance to its normative components. The *rights* attached to the norm were twofold. The resolution recognised both an entitlement to self-government and the right to equal treatment (political equality and equality of rights). The *people* were, in turn, less clearly defined. The resolution referred to “all peoples” having the right to self-determination. In practice, however, the principle of *uti possidetis juris* was used to reorganise the borders of the new, “self-determined” states. The principle guaranteed that the borders of the new states followed the boundaries of the old colonial empires from which they originated. As indicated by Steven Ratner, at the UN, the principle was appreciated, as it kept decolonisation an orderly process.³⁵⁰ The tension between self-determination’s “revolutionary form” as in the years before 1960 and its more “reactionary form” set through international disciplining was translated in international law, as international society came to define the appropriate units of political authority.³⁵¹ In 1960, Ivor Jennings words, pronounced only a few years earlier, in 1956, made complete sense: “on the surface [*self-determination*] sounded reasonable: let the people decide. In fact, it was ridiculous because the people cannot decide until somebody decides who are the people.”³⁵²

Hence, just one day after the adoption of resolution 1514, the General Assembly adopted resolution 1541, *inter alia* establishing the specific forms that the exercise of self-determination could take for colonial territories. It could either lead to the formation of a

³⁴⁹ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 190–192.

³⁵⁰ Ratner, “Drawing a Better Line,” 610.

³⁵¹ I borrow the two expressions, “revolutionary” and “reactionary” from Simpson, “The diffusion of sovereignty,” 1996, 264.

³⁵² Jennings, *The Approach to Self-Government*, 56.

sovereign independent state, to free association with an already existing sovereign state, or to integration with an independent state.³⁵³ All these forms were associated in the resolution to the idea of individual equality, human rights and freedom. Accordingly, principle VIII of the resolution stressed that, within the newly formed states, equal citizenship and status, as well as equal guarantees of fundamental rights and freedoms, were to be respected. The resolution did not state how the respect and equality of all at the domestic level was to be guaranteed. It did mention some of the responsibilities attached to the exercise of the right (or perhaps, just allocation of the norm.) These responsibilities were delineated along the lines of respect for equality and human rights.

As Antonio Cassese has argued, in becoming a principle of *jus cogens*, self-determination played a part in strengthening state responsibility with regard to the protection and rights of domestic populations.³⁵⁴ He has thus suggested that it introduced a new criterion by which to judge the legitimacy of domestic power internationally: the respect for the wishes and aspirations of peoples.³⁵⁵ Cassese describes such process as an erosion of the traditional definition of sovereignty. I depart from this view, supporting instead the idea that expectations attached to self-determination contributed to the shaping of post-colonial conceptions of statehood and membership in a very specific way. In 1960, the respect for human rights, political equality and equality of rights came to redefine what good domestic order ought to be. Two years later, in 1962, when discussing the principles of freedom and non-discrimination in the matter of political rights, the General Assembly clearly stated that political rights, freedom and equality could be guaranteed only if self-determination existed.³⁵⁶ Conversely, political rights embodied the most democratic means to achieve self-determination. In his 1962 Study of Discrimination in the Matter of Political Rights, addressed to the Commission for Human Rights, Chilean delegate Hernan Santa Cruz thus stated:

“[...] The effective exercise of political rights is a means of attaining all other rights and freedoms. Thus the eradication of discrimination in respect of these rights may be viewed as a way of suppressing other forms of discrimination, and helping all peoples to enjoy their human rights and fundamental freedoms.”³⁵⁷

³⁵³ A/res/1541[VI] (XV)

³⁵⁴ Cassese, *Self-Determination of Peoples*, 176–185.

³⁵⁵ Ibid., 316.

³⁵⁶ GA official records, SO 239 (4), UNA.

³⁵⁷ Doc E/ CN.4/sub.2/NGO/24, 2. UNOGA

Unlike 1919, no mechanism of supervision was set up to guarantee the respect of the standard of self-determination. After all, Resolution 1514 restated the “liberal pluralism” of the UN Charter, grounded on sovereign equality of all states and on non-interference. The matter was settled.

Throughout the 1960s, discussions at the UN shifted from self-determination to those specific situations in which hierarchy was still formalised. Through extensive use of violence, Portugal kept in fact an important number of its colonies until Salazar's death in 1974. In South Africa, the official Apartheid regime was maintained until 1994. Throughout the 1960s and 1970s several UN resolutions continued to recall the importance of self-determination for people under “foreign domination.”³⁵⁸ In 1962 a special committee, known as the committee of 24, was established to monitor whether colonial empires were recognition self-determination claims within their possessions. In 1966, The Covenants on Human Rights were ratified. In 1973, resolution 3103 clearly defined empire as a crime. Yet today, the remnants of colonial rule have not disappeared. For instance, Madeira is an integral part of Portugal. France still possesses a great number of both *Territoires* and *Départements d’Outre-Mer*. Britain, in its turn, has turned towards the “fraternal” association of the Commonwealth, formed by 53 independent states – all former colonies of the British Empire that have voluntarily decided to join the organisation.

Conclusion

In the years following the war, this chapter has shown, the aspirations for a so-called liberal world order that UN delegates upheld were complemented by hierarchical worldviews. This chapter has thus argued that in the aftermath years of the war, numerous members of the UN considered empire and colonial rule were considered legitimate forms of political authority and organisation. Despite the insertion of the right of self-determination in the UN Charter, self-government for colonial peoples constituted, in the eyes of many, a very marginal prospect. It was post-colonial delegates that, in the 1950s, made it a norm with universal application – at least in theory. Endorsing the points made by Christian Reus-Smit and Roland Burke, this chapter has argued that post-colonial states at the UN used the western defined

³⁵⁸ In his work Pomerance, *Self-Determination in Law and Practice*. 14, Pomerance lists all the UN resolutions specifying that self-determination legally referred to peoples under colonial and foreign domination: 2189, 2621, 2649, 2708, 2878, 2787.

language of human rights to ground their specific claims for equality and self-determination, granting a different content to such language. Empire was formally delegitimised and self-determination became the *universal* standard for statehood and membership in post-colonial society. This process, I have suggested, was accelerated in particular after the Bandung Conference. In 1955, Asian and African representatives of independent, post-colonial states came to delineate a common, “Third World” identity for the entire non-western world. Interestingly, in addition to the call for independence for people still living under colonial rule, this identity was delineated along liberal ideals of freedom and human rights. These premises echoed to acclaim, within numerous colonial territories, where populations increasingly invoked the idea of self-determination and human rights.

This process, which lasted for more than a decade, led, in 1960, to the adoption at the General Assembly of Resolution 1514, granting independence to colonial people. It was followed the day after by resolution 1541. I have shown how both resolutions granted substance to international society’s expectations attached to self-determination. Self-determination was in principle a right for all peoples, without racial, ethnic or religious distinctions – even if in practice it was limited to colonial territories. The resolutions identified self-government, political equality and equality of rights as the rights attached to the norm of self-determination. Responsibilities associated with the exercise of self-determination, once statehood was gained, were defined in the UN documents, in turn, in terms of the respect of inclusion, equality and human rights of domestic societies. The standard, once more, was set, redefining what legitimate statehood and membership in post-colonial international society ought to be. Sovereign equality and non-interference were also reiterated in the UN documents, underlining its pluralist orientation. Again, older members of international society delineated new expectations (*if not in their substance, at least in their application*) attached to self-determination. Differently from the past, though, toleration was, unambiguously, to guide international society’s behaviour towards the new, “self-determined” states.

Ends of Empire, Post-Colonial Statehood and Membership in 1960s Africa

Struggles at the UN led to the adoption of 1960 General Assembly Resolution 1514, demanding the termination of colonialism. The resolution upheld the *right* of self-determination as the expression of peoples' political will and autonomy from external interference, "in the universal respect for, and observance of human rights."³⁵⁹ Simultaneously, Resolution 1514 prompted, in the name of self-determination, both the equality of peoples and human rights and the immediate constitution of new states in areas still under colonial rule. In just one year, 1960, 19 new states were formed, joining and thereby expanding international society, 17 of which were in Africa. This rapid transformation of the system of states in the name of equality, self-determination and human rights was accompanied, internationally, by many hopes and fears. In the words of Ralph Bunche, 1960 would be the "year of Africa" due to the "explosive rapidity with which the peoples of Africa in all sectors are emerging from colonialism."³⁶⁰

The states that had emerged from the end of colonialism, after international ruling, were founded on the right of self-determination that, itself, was strongly governed by liberal norms. Nonetheless, when the new post-imperial states came to draw the boundaries of their political communities, discrimination often prevailed over inclusion; hierarchy over equality. Just as in 1919, the tension between egalitarian aspirations of self-determination, and practices of hierarchy associated with self-determination was manifest. The novelty, in 1960, lay in how pronounced the tension was. Reasons for that, I shall argue, were twofold. On the one hand, as I have shown in the previous chapter, from being an *ad hoc* principle, self-determination was now a norm with global application, explicitly embedded in the human rights frame. On the other hand, in several African states, the uneven distribution of (political) rights followed the lines of imperial hierarchies.

As I shall argue in this chapter, whereas colonial territories that acquired statehood in the name of self-determination had long-established institutions and norms, these did not conform

³⁵⁹ A/Res/1514 (XV)

³⁶⁰ As reported by Paul Hofmann in his 17th February 1960 article in the New York Times: ³⁶⁰ A/Res/1514 (XV)

³⁶⁰ As reported by Paul Hofmann in his 17th February 1960 article in the New York Times

to the dominant international views of equality after empire. New states, in fact, largely inherited imperial rights regimes in which entitlements were allocated along hierarchical lines. In several post-colonial states, hierarchical membership endured. Just as in 1919, too, international expectations attached to the idea of self-determination were not met, resulting in what many perceived internationally as a mistranslation of the right. Post-colonial African states that gained independence in the 1960s were thus built on a series of domestic and international tensions that post-colonial scholars have engaged with.³⁶¹

Accordingly, the chapter is organised into five sections. The first section sets the historical context in which hierarchical membership re-emerged and outlines in greater detail my argument with regards to post-colonial Africa and territorial self-determination. The second and third sections respectively identify continuities between French and British colonial membership practices, after World War II and the uneven allocation of rights in post-colonial states. The fourth section deals specifically with the case of Nigeria, as a practical illustration to some of my claims. After independence, hierarchical membership was openly formalised in a context of increasing violence that raised international concern as claims to self-determination reappeared domestically. I present in the fifth section a further, more provisional claim. With decolonisation, international supervisory regimes retreated, due to norms of sovereign equality and non-interference. However, I suggest that in a more tentative form, hierarchical worldviews were reconstituted in the arguments of numerous scholars.

Territorial Self-Determination and the Legacies of Empire in Post-Colonial Africa

In spite of liberal expectations attached to self-determination, in this chapter I argue that membership hierarchies often prevailed within newly formed African states, even if informally, over ideas of equality, individual freedoms and rights. National and local African leaders found in ethnicity and other kinship criteria empowering supports to justify new distinctions grounded in old ideas and practices. These were ideas and practices of hierarchical membership that colonial authorities had historically promoted. States that came into existence in the name of self-determination were territories formerly under the authority of empires, or systems based on “regimes of unequal entitlements.”³⁶²

³⁶¹ Anghie, “Nationalism, Development and the Postcolonial State,” 2006; Chatterjee, *The Nation and Its Fragments*, 1993; Geertz, *The Interpretation of Cultures*.

³⁶² Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 41.

The belief held by many, that instilled colonial conceptions would simply disappear with the diffusion of self-determination, with the proclamation of independent statehood and the enforcement of human rights was, perhaps, naïve. “Third World” rights claims had led to the formal demise of imperial rule and to the endorsement of liberal values defining the nation-state internationally. These rights claims made internationally, however, did not resonate in the same way *within* many former colonies that in 1960 had seen their right to self-determination recognised and gained sovereignty after international ruling.

In the case of Africa, the right to self-determination was equated with the application of the principle of *uti possidetis*. Internationally, I have already suggested, the allocation of territorial self-determination kept the process of decolonisation orderly. The international justification of self-determination on universal moral grounds led to the delegitimation of imperial institutions. Domestically however, the application of the principle of *uti possidetis* entailed very different consequences. First, it meant that statehood was recognised following old colonial borders, and not following peoples’ understandings of membership, popular will and self-government. This is not to say that the boundaries of belonging of the colonised peoples themselves were clearly delineated. For example, the Pan-Africanist movement itself alluded to very different understandings of self-determination, spanning from nationalist claims to a union of all the African peoples.³⁶³ Second, it implied that institutions were formally devolved to national élites of the new, independent states.³⁶⁴

From 1960, transitions from empire to nation-state following resolution 1514 very often took place in a formal and peaceful manner.³⁶⁵ Differing from 1919, the majority of the newly “self-determined” states that were granted statehood after resolutions 1514 and 1541 were unconditionally recognised as equal sovereigns.³⁶⁶ While the nation-state came to represent the condition for membership within the international system, the application of its constitutive attributes, as internationally defined by ideas of equality and inclusion, I argue in this chapter, simply did not follow within post-colonial states. Instead, local élites and

³⁶³ For a discussion on divergences in pan-Africanist visions before 1962 see: Emerson, “Pan-Africanism.”

³⁶⁴ Chazan et al., *Politics and Society in Contemporary Africa*, 1999, 44–45.

³⁶⁵ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 157.

³⁶⁶ Jackson, *Quasi-States*, 1990, 27.

institutions directly inherited colonial norms and rules through the transfer of the administrative and political apparatuses presupposed by formal decolonisation.³⁶⁷

To be sure, arguing that post-colonial states presented an institutional vacuum, as to western-defined rights associated to the model of the nation-state, does not equate with the claim that rights did not exist within African colonial systems. Rights were allocated. However, they were allocated on uneven bases. As argued by Reus-Smit, the legitimacy of empires was sustained “by institutional structures, the social and legal norms of which exert a form of structural power, generating unequal subject positions and allocating them with differential capacities and entitlements.”³⁶⁸ It is precisely this hierarchical allocation of rights that naturalises hierarchy. Moreover, as indicated by Jane Burbank and Frederick Cooper, colonial empires were more explicit in codifying difference than were “aristocratic empires.”³⁶⁹

In the early 1960s, post-colonial states directly inherited these hierarchical structures and institutions. This, I suggest, was also the result of the formal devolution of power involved in the application of the *uti possidetis* principle. In some sense through decolonisation, self-determination lost in fact its “democratic and revolutionary potential.”³⁷⁰ Thus, at the moment of 1960s African independences, despite the endorsement, after international ruling, of the nation-state model, hierarchical structures constituted the norm in the allocation of rights to domestic populations. The way in which hierarchical logics manifested themselves varied and, I argue, was more, or less explicit, according to the type of rule and policies set up by colonisers.

During colonial rule, in Belgian and British colonies for example, hierarchies appeared more visibly because of the clear “divide and rule” practices set up by imperial officials. Those practices consisted in favouring politically, socially and economically specific local chiefs or local groups over others, by granting them more entitlements and recognition, in exchange for a greater collaboration with colonial rulers.³⁷¹ Differences among groups were reified through politics of differentiation, often along ethnic and religious lines.³⁷² Such politics of

³⁶⁷ Chazan et al., *Politics and Society in Contemporary Africa*, 1999, 48.

³⁶⁸ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 41.

³⁶⁹ Burbank and Cooper, “The Empire Effect,” 243.

³⁷⁰ Simpson, “The diffusion of sovereignty,” 1996, 269.

³⁷¹ Duara, *Decolonization*, 13.

³⁷² Ogot and Ochieng, *Decolonization & Independence in Kenya, 1940-93*, 1995, 121–122.

recognition, I suggest, directly contributed to the inauguration of practices of hierarchical membership after statehood was proclaimed in territories formerly under Belgian and British rule. To be sure, practices of hierarchical membership existed also elsewhere, for example in those Asian territories formerly under British rule that were granted independence before and after 1960.³⁷³ My focus is, however, directed on Africa. It was there in fact that the application of resolution 1514, setting self-determination as the universal standard of legitimate membership and statehood after empire in the name of equality and human rights, was most striking.

Differently from British colonialism, French and Portuguese empires had less clear-cut hierarchies, both being characterised by what are known as “assimilationist” practices. By no means did assimilationist practices make colonial regimes more equal. As Partha Chatterjee has argued, notwithstanding official discourses or policies, difference rested at the heart of any colonial empire.³⁷⁴ Imperial arguments about assimilation though made discrimination and hierarchy less visible, simply because they were more ambiguous. As Martin Shipway has argued, France’s claims to be seen as a “liberal” colonial power rested on the hierarchical integration of colonial dependencies in its constitutional structures.³⁷⁵

While in British colonies difference was constructed along settled ethnic, kin, and religious group lines, in Portuguese and French colonies inclusion and exclusion were in great part the matter of individuals’ merit. Colonial authorities drew the line very clearly between citizens and subjects. However, in the case of certain French colonies, individual subjects could be granted more, or less, recognition in relation to their loyalty towards the empire. In particular during the Third *République* (1870-1940), Paris argued that indigenous people in Algeria who had become “civilised” could apply to become French citizens. However, they had to renounce local forms of civil law and meet increasingly high standards that, as argued by Frederick Cooper, only few could provide.³⁷⁶

At the UN though, at time of the independences, inherited hierarchies within post-colonial states did not attract much interest. After all, they were set up within domestic states and

³⁷³ Phadnis and Ganguly, *Ethnicity and Nation-Building in South Asia*. In their book the two authors present both the practice and scholarly debates on ethnicity after colonialism.

³⁷⁴ Chatterjee, *The Nation and Its Fragments*, 1993, 25.

³⁷⁵ Shipway, *Decolonization and Its Impact*, 2008, 130.

³⁷⁶ Cooper, *Colonialism in Question Theory, Knowledge, History*, 2005, 170–176.

among domestic societies. If sovereign equality and non-interference were to be the norms governing international society, why would domestic hierarchies be a matter of international concern? The case of the “Harkis” from Algeria represented, perhaps, an exception. The Harkis were “French Muslims” who volunteered in the French army during the two world wars and later fought alongside France during the Algerian war. In exchange for their collaboration, during colonial rule they were granted greater public recognition as well as social and political rights.³⁷⁷ With the end of colonial rule, however, harkis were the object of widespread discrimination and violence on the side of the Algerian Front de Libération Nationale.³⁷⁸ Whereas concerns were raised at the UN, since these were individuals that had collaborated with France, the matter was promptly deemed as one of French concern.³⁷⁹

In other words, in the Cold War interpretation of the UN Charter, domestic discriminations, although occasionally leading to extensive use of violence, did not constitute a threat to international peace and stability. Throughout the 1960s, discussions at the UN turned instead to those situations regarding the endurance of imperialism, strictly defined along a racial line. This was the role of the Special Committee of 24, established a year after the adoption of resolution 1514 and in charge of the implementation of the Declaration on Granting Independence to Colonial Peoples. Following resolution 1514, colonialism was defined as the “subjection of peoples to alien subjugation, domination and exploitation [*constituting*] a denial of fundamental human rights (...) and an impediment to the promotion of world peace and cooperation.”³⁸⁰ Accordingly, the work of the Committee was almost exclusively directed to territories still under Portuguese rule. Until the death of Salazar in 1974 and the following demise of the dictatorship, Portugal continued to claim that colonies were a domestic matter, refusing to produce any kind of justification for its extremely violent practices. Discussions at the UN also increasingly concerned the situation of South Africa with regards to its Apartheid regime. In 1963, a special committee was formed to deal with the matter.

Hierarchical membership within newly formed, independent states was thus not a question of international debate. Instead, put bluntly, it was largely associated with the view that because African states were weak, human rights violations were more recurrent. This view was also

³⁷⁷ See Evans’ Chapter VII “The Harkis: the Experience and memory of France’s Muslim auxiliaries Alexander, Evans, and Keiger, *The Algerian War and the French Army, 1954-62*.

³⁷⁸ See Evans’ Chapter VII “The Harkis: the Experience and memory of France’s Muslim auxiliaries *ibid*.

³⁷⁹ Report to the United Nations by Christian de Saint-Salvy, General Controller of the French Army, 1962.

³⁸⁰ A/res/1514 (XV)

conveyed in scholarly literature. Famously, in the study of International Relations, Robert Jackson made the argument that the human rights regime was codified as a reaction against the weakness of post-colonial states.³⁸¹

It should also be said that right after 1960, it seemed hard to conceive the endurance of a hierarchical culture within those very same states formed in the name of the liberationist principle of self-determination, to which so many hopes had been attached. However, whereas the hierarchical culture inherited within African post-colonial states was no longer visibly framed around a racial norm, ethnicity and other forms of local loyalty affiliation replaced it.³⁸² It is widely acknowledged in the literature that ethnicity characterised a fundamental feature of African post-independence politics of state formation.³⁸³ Post-colonial scholars have shown the relevance of locating ethnicity and other kinship ties peculiar to post-imperial politics of recognition on a line of continuity with imperial systems of unequal treatment.³⁸⁴

As said, explicit hierarchies in population groups, as in the case of former British colonies, did not always emerge. Moreover, not always were they institutionalised. In the case of former French colonies, for example, inherited assimilationist views in the understanding of membership and rights shaped post-imperial politics of state formation. Although they did not correspond to hierarchical membership as inaugurated in former British colonies, these should also be acknowledged, as they do represent a form of inherited hierarchy.

The French Empire and its Legacies:

Assimilation and Discrimination in Colonial and Post-Colonial Africa

Within French former colonies that gained independence in a peaceful way after resolution 1514, logics of hierarchy were disguised under assimilationist discourses about inclusion in the political community. I want to argue that such informality was to a great extent the direct result of French colonial assimilationist policies. British membership-related practices were

³⁸¹ Jackson, *Quasi-States*, 1990, 140.

³⁸² Mamdani, *Citizen and Subject*, 1996, 4.

³⁸³ See as cases in point Chazan et al., *Politics and Society in Contemporary Africa*, 1999. For a sociological perspective see instead Berman, Eyoh, and Kymlicka, *Ethnicity & Democracy in Africa*. In International History the point has been repeatedly made. See emblematically Burbank and Cooper, *Empires in World History*.

³⁸⁴ Interestingly, the rare authors that made the attempt are all post-modern historians and political theorists See respectively Levy and Young, *Colonialism and Its Legacies*. And Kohn and McBride, *Political Theories of Decolonization*.

grounded in explicit differential ideas. French officials instead propounded the illusion that sooner or later, all colonised people would become French citizens, that all colonies would be an integral part of France.³⁸⁵

As Derek Heater stresses however, “imperial civic egalitarianism was never a possibility in the French colonial Empire.”³⁸⁶ Within the Empire, discrimination was vested in the assimilationist model, but it went along two lines. First and foremost, of course, along a racial line, often justified in terms of cultural states of advancement. Second, along the “personal status” of each colonised individual.³⁸⁷ The British authorities’ official practice was to divide groups along (often imposed) kinship ties within each colony and to govern them. The French instead constructed the illusion that every colonised person could be granted greater entitlements if they adopted French values and adapted their behaviour to French standards of conduct. Of course, subject peoples were neither legally nor in practice ever treated as equals to French citizens. In the words of post-colonial philosopher Achille Mbembé:

“Since the notion of citizen overlaps that of nationality, the colonised, being excluded from the vote, is not being simply consigned to the fringes of the nation, but is virtually a stranger in his/her home. The idea of political or civil equality – that is, of an equivalence among all inhabitants of the colony – is not the bond among those living in the colony. The figure of obedience and domination rests in the colony on the assertion that the state is under no social obligation to the colonised and this latter is owed nothing by the state but that which the state, in its infinite goodness, has designed to grant and reserves the right to revoke at any moment.”³⁸⁸

During the Third *République* and until 1946, the claim to eventual equality for all was in fact countered by a set of laws known as the *Code de l’Indigénat* (“Indigenous code”). The code created a hierarchy of five separate legal statuses for people living in all the French colonial possessions.³⁸⁹ “French indigenous citizens” formed the first category, at the top of the membership pyramid. It included all settlers living in French colonies, likewise all the *pièdes noirs* in Algeria, notwithstanding their country of origin. These individuals were fully-fledged French citizens, possessing the right to vote within the French polity and other corollary social rights that other individuals within the colonies could not have.³⁹⁰

³⁸⁵ Crawford, *Argument and Change in World Politics Ethics, Decolonization, and Humanitarian Intervention*, 2002, 322.

³⁸⁶ Heater, *Citizenship*, 132.

³⁸⁷ Cooper, *Colonialism in Question Theory, Knowledge, History*, 2005, 76.

³⁸⁸ Mbembé, *On the Postcolony*, 35.

³⁸⁹ Solus, *Traité de la condition des indigènes en droit privé*.

³⁹⁰ Weil, *Qu’est-Ce Qu’un Français?*, 230–233.

“French indigenous subjects” composed the second category. These were individuals who had French nationality but no citizenship and therefore no right to vote. The majority of colonised people, in particular in Africa, was included in this group. The third category was made up of French subjects with special status of *évolués* (evolved). The *évolués* were those indigenous peoples who, it was argued, had endorsed French values and behaviour and could therefore be granted greater entitlements. Seen as the products of French assimilation, *évolués* were treated as an élite among colonised people.³⁹¹ Occasionally the special status implicated a territorially demarcated understanding of rights, as in the case of the inhabitants of the Four Communes in Senegal, or of French Indian possessions. Interestingly, while they had the right to vote within their place of origin, they would lose their citizenship on leaving it. Often though, the status of *évolué* was granted in the name of an individual capacity.³⁹² The fourth category was composed by “French protected indigenous” who were individuals native to French protectorates, without, however, French nationality. *In fine*, the last group was composed by the “French administered indigenous,” namely individuals living in Trusteeship Territories.

The *Code de l'Indigénat* was legally abolished in 1946, coinciding with the creation of the French Union and proclamation of the Fourth *République*. Its new constitution declared: “France forms with its overseas people, a union grounded on the equality of rights and duties, without distinction of race nor religion.”³⁹³ In the final declaration of the 1944 Conference of Brazzaville, Charles de Gaulle had already recognised that *citizens* of French colonies would share the same rights as French citizens and that they would have the possibility to vote at the legislative elections. However, with respect to the right to vote for example, the existence of other legal norms simply impeded colonial peoples from being considered equals to French citizens.³⁹⁴ In 1945 de Gaulle formally allowed a limited number of indigenous Africans to vote, corresponding to the previous *évolués*.³⁹⁵ What de Gaulle did not publicly state was that the voting procedure implied a separate voting system and the existence of different representatives for French citizens and colonised people. Nonetheless, following de Gaulle’s decision twenty Africans received a seat at the French Parliament. This was an extremely

³⁹¹ Heater, *Citizenship*, 133.

³⁹² Morgenthau, *Political Parties in French-Speaking West Africa*, 1964, 33.

³⁹³ Preamble to the Constitution of the Fourth Republic, 27th October 1946. Translated by myself, the original being: “La France forme avec les peuples d’outre-mer, une union fondée sur l’égalité des droits et devoirs, sans distinction de race ni de religion.”

³⁹⁴ Shipway, *Decolonization and Its Impact*, 2008, 127.

³⁹⁵ Cooper, *Africa since 1940*, 2002, 41.

limited number. Nonetheless, their election represented a fundamental step in fostering debate within the French parliament between French citizens and colonised people.

The direct consequence of this political transformation was the endorsement by the First Constituent Assembly of the Fourth *République* of the Lamine-Guèye law. Adopted in May 1946, it was the result of the work of the deputy mayor of Dakar and member of the French Parliament, Amadou Lamine-Guèye. The law granted citizenship to every individual originating from “overseas France” in the same way as to any French national from the métropole.³⁹⁶ Importantly though, the law did not state which citizenship it referred to. While French Union citizenship was granted to all, French citizenship was instead maintained only for French from the métropole. In addition, the law stated that special local regulations would control the criteria and means of allocation of citizenship. The membership system that emerged in 1946 delineated the allocation of rights in terms of merit. In the French empire, such hierarchy was formed vis-à-vis status and rights that each individual could potentially acquire.

During the Fourth *République*, with the exception of some fringes of the Communist Party, the official discourse was that colonised individuals could progressively come to enjoy greater rights and economic benefits of being union citizens or partial French citizens of the empire. Assimilation continued to be strongly advocated through imperial institutions after World War II.³⁹⁷ It is important to note then that in this institutional context, differently from the British Empire, subject peoples’ claims did not, at least not right after the war, mirror demands of independence. Instead, they reflected claims for greater equality and recognition of both colonised individuals and colonies as political units. In everyday practice, however, colonised people were denied provisions for increased rights or autonomy.³⁹⁸

In post-colonial Africa, the French colonial membership regime was largely mirrored in the early years of independences. While discrimination in the form of hierarchies existed, it took place informally at the local level and was not set up through national rules, which, on the contrary, advocated for the inclusion of all. Discrimination thus generally concerned who

³⁹⁶ Crawford, *Argument and Change in World Politics Ethics, Decolonization, and Humanitarian Intervention*, 2002, 295.

³⁹⁷ Weil, *Qu’est-Ce Qu’un Français?*.

³⁹⁸ Philpott, *Revolutions in Sovereignty*, 2001, 222.

could have access to the land and access to local judicial and social bodies.³⁹⁹ Ivory Coast in its first years of existence as an independent state was in this sense a case in point. In 1958, Ivoirians were asked, in a Constitutional Referendum held in all the French colonies, whether they accepted the new French Constitution that would include Ivory Coast in a new and greater French Community or whether they preferred independence. 99,9 % of the population voted for Ivory Coast to be an autonomous entity, to be part of the Franco-African unity.⁴⁰⁰ Results in several francophone African colonies reflected a similar outcome. With the major exception of Guinea, populations voted to remain part of a broader alliance with France.⁴⁰¹ These results, I suggest, challenge Daniel Philpott's argument that subject peoples in French colonies took up arms to raise their voice against colonial rule more frequently than those living in the British Empire.⁴⁰² They also bore witness, importantly, to the profound imprint of assimilationist policies in transitions towards independence.

A year before independence, in 1959, Houphouët-Boigny, who was already serving as a minister in Paris and was strongly in favour of such an alliance with France, was proclaimed first president of Ivory Coast. His party, the Parti Démocratique de la Côte d'Ivoire, became the single political party in the country. While everyone who was a citizen of Ivory Coast could vote - following the Paris 1956 decision to expand universal suffrage to all subject peoples – electoral lists were limited to just one party.⁴⁰³ Immediately after his victory, a new Constitution was enacted in 1960. In democratic terms, the Constitution listed in its articles 3 to 7 all fundamental and citizenship rights constituted around the inclusion of all. Tolerance towards colonial institutions and practices was stressed.⁴⁰⁴ However, with several local ethnic groups recognised within the country, Houphouët-Boigny managed to create a cartel of primary state, and secondary ethno-regional elites. In every region, all major ethnic groups were assured, according to their degree of collaboration with the political regime, greater entitlements through the setting up of informal rules.⁴⁰⁵

³⁹⁹ Aristide Zolberg in Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa*, 1964, 68.

⁴⁰⁰ Morgenthau, *Political Parties in French-Speaking West Africa*, 1964, 54.

⁴⁰¹ Ibid.

⁴⁰² Philpott, *Revolutions in Sovereignty*, 2001, 164.

⁴⁰³ Aristide Zolberg in Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa*, 1964, 65.

⁴⁰⁴ Chazan et al., *Politics and Society in Contemporary Africa*, 1999, 162.

⁴⁰⁵ Ibid., 116.

It seems interesting to note that even in post-independence Algeria, which had witnessed a major popular insurrection, radically calling into question French rule, assimilationist practices endured. During colonial rule, Algeria was the object of greater discrimination in comparison to other African colonies. Different statuses existed for native populations, hierarchically organised in relation to the rights granted (or denied) to them.⁴⁰⁶ In line with French policies, with the exception of three specific legal categories, these were not formalised. While after 1946 all indigenous people living in Algeria were granted citizenship of the French Union, three further legal categories of individuals with special entitlements co-existed in Algeria after World War II.⁴⁰⁷

The first category included the so-called “Algerians” who were in fact all the *pièdes noirs* - French and other settlers – possessing French citizenship. The second category comprised of “Muslims”. These were indigenous people that the French saw as developed enough to take part to some segments of French institutional life. A further group invented in 1944 complemented this category: *citoyens français à titre personnel*. Differing from Muslims, these individuals were allowed to take part in French political life just like évolués, yet their citizenship status could not be transmitted from one generation to the next, being based in fact on personal merit.⁴⁰⁸ *In fine*, similarly to other colonies, after the war the rest of the population only had the citizenship of the French Union. In Algeria, citizens of the Union were allowed to take part in local elections. While all the inhabitants of Algeria could vote locally, two electoral systems coexisted, the vote of nine Muslims counting as the vote of one settler.⁴⁰⁹ The dominant assimilationist discourse of French colonisers disguised very deep inequalities.

Daniel Philpott claims that French oppressive assimilationist practices led to the use of violence on the side of colonised indigenous people as the only available means for them to gain independence.⁴¹⁰ I believe that Philpott makes an overstatement in including all French colonies in his argument. However, his argument is substantiated by the Algerian case. Differing from many other African colonies, Algeria was administratively a fully-fledged French overseas department. French argued that *l’Algérie c’est la France* (“Algeria is

⁴⁰⁶ Shepard, *The Invention of Decolonization*, 13.

⁴⁰⁷ Weil, *Qu’est-Ce Qu’un Français?*.

⁴⁰⁸ Shepard, *The Invention of Decolonization*, 33.

⁴⁰⁹ Evans and Phillips, *Algeria*, 53.

⁴¹⁰ Philpott, *Revolutions in Sovereignty*, 2001, 164.

France”)– a slogan that was only abandoned in 1962 after the Evian Agreements bringing the war to an end and proclaiming the emergence of an independent Algeria. As Philpott claims, the war - viewed as civil war by French and as war of liberation by native population - created a strong consciousness of national unity.

The constitution of a myth of an Algerian commonality, excluding settlers and collaborators, however, led almost ironically to the establishment after 1962 of strongly assimilationist membership practices – although categories had been reversed. A political regime of Marxist orientation advocated the equality of all, along with a national and civic identification to the state.⁴¹¹ After independence, though, as many authors have stressed, assimilation concerned the materialisation of an Arab-Islamic identity, *in fine* recognised.⁴¹² Sporadic events called into question Algerian assimilationist practices, such as the Berber 1963 uprising. These were immediately constrained.⁴¹³ It was only in the 1980s that assimilationist policies started to be radically called into question by groups that sought greater political and religious recognition, against the one party that had dominated the national political scene since 1962: the *Front de Libération Nationale*. Whereas post-independence politics of state formation in Algeria are generally associated with a modernist effort, it is not implausible to consider the setting up of strongly assimilationist policies as being in continuity with logics of empire, inherited domestically.

In numerous post-colonial states, formerly French colonies, discrimination followed assimilationist discourses. François Bayart has associated these with what he terms “the politics of the belly,” namely the tendency in post-independence Africa to privilege certain individuals and groups over others, in the interest of the political and economic interests of ruling élites.⁴¹⁴ This is certainly true. In this section, however, I have suggested that it is not impossible to think in terms of a legacy of assimilationist norms and practices in how membership was understood (and thus privileges that Bayard refers to, allocated) in post-colonial states formerly under French rule. Although these were not characterised by explicit hierarchical membership, informal hierarchies often persisted, as political élites officially endorsed assimilationist discourses. In former British colonies that had peacefully acquired

⁴¹¹ Quandt, “Algeria’s Transition to What?,” 82.

⁴¹² Inter alia: Chafer, *The End of Empire in French West Africa*; Evans and Phillips, *Algeria*.

⁴¹³ Lowi, *Oil Wealth and the Poverty of Politics*, 60.

⁴¹⁴ See Bayart, *L’Etat En Afrique*. It is in this book that the author coins the term “the politics of the belly” (as a direct translation from French) and studies them in detail.

statehood, the story was different. As we shall see, here practices of hierarchical membership were instead instigated largely in explicit continuity with previous imperial politics of recognition.

The British Empire and its Legacies:

Ethnicity and Membership in Colonial and Post-Colonial Africa

Not often enough are works outside of academia recognised as useful for scholarly consideration. The film *Burn!* is a clear illustration of this trend.⁴¹⁵ Overlooked both by academics and cinema critics, the film, loosely set in the 19th century, after the 1833 British Abolition of Slavery Act, on an imaginary Caribbean island, gives a timeless portrait of British divide and rule policies. In his 1969 film, Gillo Pontecorvo tells the story of an *agent provocateur*, interpreted by Marlon Brando, sent by the British Crown to the island of Queimada, a fictional Portuguese colony. Brando's character is in charge of organising an insurrection of black slaves, in order to overthrow the Portuguese colonial government of the island. Britain wants to get the control of the island, an important sugar cane producer. Britain's plan is, once the insurrection is overcome, to replace Portuguese authorities with white landowner inhabitants of the island, thereby creating a system of indirect control and membership hierarchy, through the formation of a privileged group.

In parallel, to convince the slaves to rise against Portuguese authorities, Brando's character persuades them to fight for their liberation and freedom using discourses of rights : why should they continue to be slaves while they could, with the help of the British, acquire recognition for their work and have a voice as to the organisation of their activities in the plantations? This is actually the plan that Marlon Brando's character exposes to the white latifundists of the island - the idea being to transform slaves into a working class, still dominated, but believing themselves to have reached collective empowerment. In his work *Colonialism in Question*, Cooper makes exactly the same point: hierarchies were locally established within British colonies through the setting up of divide and rule policies and the transposition, although loosely, of the British class system.⁴¹⁶ To be sure, Pontecorvo's film is an imaginary piece of work. It presents, however, with a touch of political activism, the broad picture of British policies of divide and rule, and their setting up in the name of progress and

⁴¹⁵ The original title is *Queimada*, by Gillo Pontecorvo, 1969 (Europe Associated SAS).

⁴¹⁶ Cooper, *Colonialism in Question Theory, Knowledge, History*, 2005, 181.

civilisational development. It represents an engaging ground from to gain insight into the British colonial membership regime.

British imperial policies in Africa were characterised by a membership system clearly delineating hierarchies of status. Two types of hierarchies existed: hierarchies specific to each colony and hierarchies ordering the empire as a whole.⁴¹⁷ Within the Empire as a whole, until 1948, four categories of membership existed: the British citizen, the subject, the British protected person – in practice often coinciding with the subject - and the alien. With the enactment of the Nationality Act in 1948, British authorities made an attempt to clarify imperial citizenship law.⁴¹⁸ While this was not the case before, the traditional status of “British subject”, which was remodelled into “commonwealth citizen”, became a derivative status, for the new concept of citizenship for each territory member of the commonwealth.⁴¹⁹ Each individual was thus to be citizen of a specific commonwealth territory, in order to be able to get what was, until 1981, British citizenship.

Similarly to the French case, British, or commonwealth citizenship was different from that of the United Kingdom. While, within the empire, everything was done to make the difference seem superfluous, the hierarchy of statuses was clearly visible at the international level. Commonwealth citizenship was not recognised as a legal status outside the empire. Subject peoples from British colonies (with the exception of British dominions) thus were, as a matter of fact, stateless. Colonies did not have a citizenship status for themselves - citizenship being then the prerogative of independent states. It could be said then that the 1948 Nationality Act carefully crafted the hierarchy between citizens and subjects, vesting actual discrimination, in the semblance of an increasing equality. Such a move was framed - both legally and politically - on the guarantee of more equality between citizens and subjects. In practice, this was by no means the case.

The 1948 Nationality Act brought in fact a “delocalisation” of citizenship status. Colonial governors became those determining, locally, who could be granted or denied access to commonwealth citizenship and local recognition. Loosely following London’s instructions as to residence requirements for citizenship allocation, British colonial officers were in practice

⁴¹⁷ Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland.*, 1957, 92.

⁴¹⁸ Heater, *Citizenship*.

⁴¹⁹ Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland.*, 1957, 92.

the sole decision makers. Within colonial territories this led to the introduction of further sub-categories of membership and, likewise, to the enforcement of divide and rule policies. Historically, divide and rule policies favoured ethnic and religious groups most closely collaborating with British authorities. After 1948, access of privileged groups to commonwealth citizenship and to local entitlements was also facilitated. For other groups and individuals, in contrast, procedures were often complicated and delayed.⁴²⁰

Colonial authorities were to decide, *in loco*, who could be included and who could be excluded from access to local membership and to commonwealth citizenship. Ultimately, the latter was a status that did not have rights attached to it. Colonial rulers instead would define the allocation of entitlements not upon the status of an individual, but in relation to their affiliation with a more, or less, privileged group.⁴²¹

From World War II, colonial authorities were increasingly aware that local populations sought forms of increased recognition and expression. As pointed out by Andrew Cohen, head of the African division, in 1946 “[*there exists*] a rapidly increasing political consciousness among Africans, a rapid extension of the educated class and the special problem of returned soldiers.”⁴²² This, Cohen claimed, risked undermining the legitimacy of colonial rule in certain colonies.⁴²³ If colonial authorities did not act to recognise greater entitlements to colonial populations, he feared, confidence in colonial institutions would be lost. Now, it was feared, western-educated élites and returned soldiers socialised by western discourses about rights and socialist ideas might spread their beliefs to local populations. How would it be possible to contain claims in an uncontested way if colonial peoples appealed to the same rights language used in Great Britain? Colonial authorities were afraid of the consequences that this contact could have on local populations. As put by Frederick Cooper, “struggles for rights, rather than rights themselves, kept contaminating the institution of empire.”⁴²⁴

Fearing a possible loss of control over subject peoples, colonial authorities initiated a set of political concessions that would empower, although in a limited manner, African indigenous

⁴²⁰ Ibid., 92–99.

⁴²¹ Glickman, *Ethnic Conflict and Democratization in Africa*, 160–167.

⁴²² Quoted in Shipway, *Decolonization and Its Impact*, 2008, 199.

⁴²³ Shipway, *Decolonization and Its Impact*, 2008, 120–121; 190.

⁴²⁴ Cooper, *Colonialism in Question Theory, Knowledge, History*, 2005, 28.

people.⁴²⁵ In the years following the war, the Colonial Office granted to autochthonous populations political recognition and right to political association. Within colonies unions and political parties could be, at least in theory, formed.⁴²⁶ This, in turn, implied that populations were entitled to vote and be granted a greater degree of recognition, if not within the colony, at least within the units of each colony.⁴²⁷ This type of western political association first developed in urban areas and rapidly expanded to the countryside. Political affiliation largely followed ethnic and religious criteria – those very same categories of recognition and differentiation that British officials had carefully stressed over decades. If not in the colony as a whole, locally political parties largely reflected kinship bonds. Accordingly, as elections were increasingly held, votes were cast following the same criteria of affiliation.

Again though, who could exercise the right to vote was the matter of resident colonial authorities' decision. Of course, even those who were allocated the right to vote were discriminated, as their vote would count less than those of settlers. The discriminatory electoral formula that was to be applied was set up in February 1949 at the Victoria Falls Conference. The votes of 100 Africans equated to the vote of one settler.⁴²⁸ Africans had separate electoral lists on the ground of race, and separate types of representation, along both racial and ethnic lines. After all, as Oliver Stanley, Colonial Secretary during the second half of World War II, stated in 1943: "it is not part of our policy to confer political advances which are unjustified by circumstances or to grant self-government to those who are not yet trained in its use."⁴²⁹ The establishment of trade unions and political parties related to clearly justified circumstances. After the war, imperial rule and benevolent practices attached to it had to be reaffirmed.

Some fifteen years later, though, things had very much changed. At the UN, institutionalised systems of unequal treatment and colonial empires had lost ground. Intellectuals and political groups regularly appealed to a language of (political) rights shared internationally. Those very rights that British authorities had so carefully allocated to reassert the primacy of imperial authority after the war became the source of imperial delegitimation itself. Even throughout

⁴²⁵ Chafer, *The End of Empire in French West Africa*.

⁴²⁶ Jerg & Butler "On Trade Unions", in Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa*, 1964.

⁴²⁷ Adebayo, *Managing Conflicts in Africa's Democratic Transitions*, 9, 55-56.

⁴²⁸ Murray in Lynn, "The British Empire in the 1950s.", 59-60.

⁴²⁹ quoted in Jackson, *Quasi-States*, 1990, 89.

the 1950s, colonial officers continued to describe self-government as a lengthy reform.⁴³⁰ In Africa, Westminster claimed, the route to self-government was still very long. Though a Trusteeship Territory, Ghana's independence in 1957 highlighted that colonies would be able to reach some form of self-government faster than previously expected. 1960 transformed such presumption into a certainty. In recognising the array of new states that emerged after the adoption of resolution 1514, Britain acknowledged the end of formal colonial rule. Colonial settlers and officers progressively left British Africa, whereas London started to look for new forms of association with its former colonies. The formal process of decolonisation, implying the devolution of power and institutions to newly proclaimed local authorities, was set in motion, taking often several years to be completed.

As mentioned earlier, Philpott argues that British decolonisation took place peacefully, in contrast to French decolonisation, which was comparatively more violent.⁴³¹ He explains this alleged contrast by claiming that while in both empires revolutionary ideas gained power, the kind of decolonisation that followed depended on the type of extant colonial membership policies. Because of British explicitly differential policies, Philpott contends, the use of violence was not needed by either of the two sides: subject peoples had already some kind of recognition and British authorities did not need to respond to growing claims with arms. British practices, Philpott claims, created sufficient space for identification and autonomy that subject peoples used to construct their revolutionary ideas, leading to independence.⁴³² However, it would seem that any insight into local processes of decolonisation simply undermines Philpott's arguments. Moreover, his distinction between the "small conflicts" that, he claims, characterised the end of British Empire, and the more lengthy and violent ones that characterised the end of the French Empire seems rather questionable. Certainly the Algerian war lasted eight years, but so did the Mau Mau uprising in Kenya, where British officers made extensive use of torture. The use of violence was obscured by racial worldviews and justifications by British officials that the conflict was a matter of "domestic" concern. I believe though that it is deeply equivocal to use the degree of internationalisation of a *colonial* conflict to qualify it as "big" or "small".

⁴³⁰ Philpott, *Revolutions in Sovereignty*, 2001, 177–179.

⁴³¹ Philpott, *Revolutions in Sovereignty*, 2001, 164.

⁴³² *Ibid.*, 179.

Reus-Smit's broader argument about the end of colonialism is instead far more convincing. Reus-Smit contends that independence was gained much more peacefully after the adoption of resolution 1514 than, proportionally, before the institutionalisation of self-determination (with the exception of the Portuguese colonies.) He suggests that resolution 1514 both empowered colonial peoples and delegitimised violence on the side of colonial powers to retain power.⁴³³ The UN successfully created a normative space for rights claims and claims to self-determination to resonate internationally. Domestically however, within the new states formed after resolution 1514 in the very name of the norm of self-determination, hierarchy often continued to exist. In former British colonies, this took the form of practices of hierarchical membership. Almost paradoxically, it seems that the more peaceful and uncontested the end of colonial rule was, the more formalised practices of hierarchical membership were.

In the first years of existence of numerous African states formerly under British rule, ethnicity constituted a major criterion of hierarchical membership (along with other kinship ties.) In the colonial era, indirect rule in particular had favoured the establishment of ethnicised structures of belonging and recognition. As put by Mamdani, "through the combination of a state-sanctioned and ethnically-defined custom informed by a state-appointed and ethnically-labelled 'customary (native) authority,' colonial powers tried to fragment the subject population for a racialised majority to several separate ethnicised minorities."⁴³⁴ Constructed in its modern form through the encounter of local logics of membership with British norms and institutions, for decades politicised ethnicity had been a tool of control over local populations. This however, signified that it had also been internalised by indigenous populations. As such, it had also represented an instrument of indigenous revolt, as the Mau Mau uprising and Kikuyu identity illustrate. Ethnicity was the available, but also the natural means on which the organisation of domestic order would be grounded.⁴³⁵ The analogy has already been drawn between ethnicity and class in several British colonial and post-colonial contexts in the immediate post-independence years.⁴³⁶ Often with independence, empowered

⁴³³ Reus-Smit, *Individual Rights and the Making of the International System*, 2013, 157.

⁴³⁴ Mamdani, "Historicizing Power and Responses to Power," 871.

⁴³⁵ Babou, "Decolonisation or National Liberation," 13.

⁴³⁶ Glickman, *Ethnic Conflict and Democratization in Africa*; Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa*, 1964; Geschiere, *The Perils of Belonging Autochthony, Citizenship, and Exclusion in Africa and Europe*; Kitching, *Class and Economic Change in Kenya*.

groups during colonial rule became, through the institutional and administrative devolution of power, national ruling classes.

After independence, ethnicity did not always appear explicitly within domestic pieces of legislation. It was, instead, generally used as the criteria for political affiliation, party and union membership. Following the suggestions of British officials that “helped” newly proclaimed authorities to frame national laws, imperial citizenship laws were often simply transferred to the domestic legislations of new states and adapted.⁴³⁷ Post-independence citizenship acts nominally defined the modes of allocation and denial of membership status. As a result, citizenship was largely defined in legal terms as a mere status. Whereas the model of the nation-state had been imposed upon former colonial people, the western understanding of citizenship, implying a set of well identified political, civil and social rights, had been absent during colonial rule and was absent within post-independence legislations. In turn, and perhaps unsurprisingly, human rights and fundamental freedoms (attached to the right of self-determination internationally understood) were regularly referenced. This was somehow a paradox. The importance of political rights was stated in several UN resolutions, defining them as the means to exercise popular will. Within national laws, however, their exercise was often separated from the status of citizenship itself.⁴³⁸

The major exception to this general trend was embodied by Tanganyika, later Tanzania that used to be a Mandate territory and later Trust territory. Openly endorsing a socialist ideology, its president Julius Nyerere, believed that ethnicity was counter-revolutionary. He therefore promoted in the first years after independence a national, Tanzanian, identity based on the idea of equality of all.⁴³⁹ In other words, Nyerere depicted ethnic identity and other kinship ties as undermining the bases of the political community and withheld them from public discourse. Nyerere argued for an African socialism, emphasising collective responsibility over the individual. This, he advocated, was closer to “traditional” African forms of society than to western models.

⁴³⁷ As part of the broader devolution process Glickman, *Ethnic Conflict and Democratization in Africa*, 45.

⁴³⁸ As we are about to see for the case of Nigeria.

⁴³⁹ Nyerere, *Tanzania Ten Years after Independence*.

In several other domestic contexts, however, hierarchical membership following kinship lines often prevailed quite explicitly, though equality was formally mentioned.⁴⁴⁰ This was the case in particular in more conservative regimes that maintained continuities with colonial institutional and administrative systems following independence. Often, British officials were replaced with local élites and with those groups that locally supported such élites, through systems of coalitions. Differently from former French colonies, practices of hierarchical membership were set up in continuity with British colonial practices, as shown by the case of Nigeria. Ethnic distinctions insidiously took over the racial line.

Politics of State Formation in Nigeria (1959-1967)

Nigeria gained independence in 1960. From then on, ethnic and religious affiliations were, in continuity with colonial policies, regularly used as grounds to include or exclude individuals from full membership in the political community. Hierarchical membership was highly formalised both legally and in political behaviour. This formalisation led to an extensive use of violence on the side of the various ethnic groups recognised. Though displaying greater discriminatory norms and practices when compared to other former colonies of the British Empire, Nigeria is a particularly relevant case to be studied, both because of the pervasive violence and because of the resurgence of self-determination claims domestically. These fostered international debate in the 1960s and 1970s though not at the UN. It was civil society and non-governmental organisations that started to question the boundaries of the idea of self-determination as defined after 1960.⁴⁴¹ Accordingly, first I present the history and politics of Nigeria in the initial years following independence, drawing the line between colonial and post-colonial hierarchical membership. I then discuss the implications of hierarchical membership for the use of extensive violence in the country leading to the proclamation of Biafran secession.

History and politics of Nigeria in the post-independence years

In 1960s Nigeria, hierarchical membership went along two lines: one national and one local. At the central level, discriminatory practices were set up with the support of legal norms.

⁴⁴⁰ Mamdani draws the difference between more revolutionary regimes and more conservative ones Mamdani, *Citizen and Subject*, 1996.

⁴⁴¹ See on the matter: Simpson, “The Biafran Secession and the Limits of Self-Determination.”

Since its creation by Britain in 1914, Nigeria had been internally divided into three main ethnic regions. After independence, these regions continued to constitute the national organisational rationale, both territorial and administrative. The Northern Region was the largest, but also the poorest and most rural. Demographically, it was constituted by an aggregate of recognised minorities, among which the Hausa-Fulani constituted the widest group. The Western Region was instead richer and more urban. Under colonial rule, it hosted major commercial and administrative activities in which the Yoruba, the principal regional ethnic group, participated – obviously within the limits of those posts opened to Africans. The Eastern Region, the last of the three, accommodated until 1960 the bulk of colonial settlers. The Igbo people that lived in that region, the third main ethnic group of Nigeria, were generally perceived in the rest of the colony as westernised and richer, closely collaborating with British officials.

Accordingly, Hausa-Fulani, Yoruba and Igbos were the three main groups recognised by British authorities; they were also the groups with more legal entitlements within national legislation after independence. The approximate remaining 40% of the population that did not identify with these groups but with other minorities was, and continued to be after independence, excluded from political recognition, although acknowledged within demographic censuses.⁴⁴² The political and social structure of colonial Nigeria was thus maintained after independence, with power being transferred directly to those loyal individuals that had most closely collaborated with British authorities: the Igbos. While all Nigerians were formally equal citizens, individuals were still compartmentalised in ethnic groups. The spirit of the pre-1960 claims to access to land, of the struggles for social rights, and for the end of colonial rule was not really reflected in the post-independence discriminatory national political agenda.⁴⁴³

With regards to legal citizenship, provisions were inclusive for the population already living or born in the country. For those individuals born after 1960, the *jus sanguinis* criterion was instead preferred to the territorial one. According to the 1960 Constitution, Nigerian authorities had the discretionary prerogative to decide by unqualified administrative procedures to deprive any individual of national citizenship, without the possibility for the

⁴⁴² This is an approximation. 40% refers in fact to the 1963 census. The census itself was deemed irregular. Melson and Wolpe, *Nigeria*, 1971, 47.

⁴⁴³ Ibhawoh, *Imperialism and Human Rights*, 2.

injured party to appeal at all.⁴⁴⁴ Importantly, dual citizenship was not permitted.⁴⁴⁵ This was a common clause in post-colonial Citizenship Acts and constitutions. It was articulated to urge British settlers to leave or at least to exclude them from the national body politic, forcing them to opt either for British or Nigerian citizenship – the latter being rarely chosen. All other individuals belonging to any “community indigenous to Nigeria” could seek citizenship status.⁴⁴⁶

The possibility to discriminate on ethnic grounds was allowed with far less transparency through other legal means. To satisfy internal groups’ claims, but also strengthening divide and rule policies, in 1954 the British enacted a new constitution that institutionalised the three constitutive regions of Nigeria, allowing for greater local autonomy. The 1960 independence Constitution recognised the regions’ borders.⁴⁴⁷ These were drawn along ethnic lines, in relation to the three core recognised groups within Nigeria. Discontent was widespread. On the one hand, unrepresented minorities under colonial rule argued for the creation of special regions in which they would be recognised. On the other hand, each of the three main groups demanded greater shares of territory, so as to include their respective members. The legal provision was, however, reinforced in 1963, with the enactment of the second Constitution, transforming Nigeria into a federation. From 1963, each region had its own constitution, government, legislature, civil service and judiciary. The central government dealt with national defence and public policies. A fourth region, the Mid-West, was also added to the list in order to satisfy representation claims of those minorities living in the *no man’s lands* between the three regions.⁴⁴⁸

In applying inherited colonial administrative boundaries, Jonathan Hill has argued, “the architects of the post-independence political settlement had hoped to minimise the frictions between [*the groups*]. Each was to be governed by those of their own kind, by individuals who shared the same values, religion and language.”⁴⁴⁹ However, several inconsistencies were attached to this project. First, this constitutional “consociational” system disregarded

⁴⁴⁴ Okoli, “Nigerian Citizenship Law,” 39.

⁴⁴⁵ (after the age of 21). 1960 Nigerian Constitution, Chapter II, clauses 15 and 16. These clauses were reasserted in the 1961 Citizenship act and the 1963 Constitution.

⁴⁴⁶ Okoli, “Nigerian Citizenship Law,” 29 Seeking Nigerian citizenship was possible for individuals originating from a “community indigenous to Nigeria” with a limit to the second generation.

⁴⁴⁷ Glickman, *Ethnic Conflict and Democratization in Africa*, 315.

⁴⁴⁸ Melson and Wolpe, *Nigeria*, 1971, 632.

⁴⁴⁹ Hill, *Nigeria since Independence*, 47.

any other minority within each of the three constitutive regions. It strengthened instead the position of, respectively for each region, Hausa-Fulani, Yoruba and Igbos. Second, the 1963 federal constitutions were articulated in a very ambiguous way. They impeded individuals changing place of residence and moving to another federal unit from having access to certain services and, importantly, to political participation. The allocation of rights was not conceived in relation to the place of residence. It was the place of origin that was to be decisive, just like under colonial rule, underlying the centrality of ethnicity in the understanding of membership. Co-ethnics were therefore favoured regionally, while others were *a priori* excluded from access to certain rights. While within one of the three ethnic regions members of the two other main groups were recognised at the national level and could, at least in principle, ask for more equality, unrecognised minorities, instead, were totally excluded from any form of collective appeal.

Divisions inherited from colonial empire were more apparent within the domestic and regional party systems.⁴⁵⁰ As within other African British colonies, Nigerian people were allowed to set up structured political parties and unions during World War II. From then on, in Nigerian political life was organised around a tripartite system defined along ethnic and kinship lines.⁴⁵¹ The National Council of Nigeria and the Cameroons (NCNC), born to be a pan-Nigerian party and led by Nnamdi Azikiwe, became soon after World War II an Igbo-dominated organisation based in the Eastern Region.⁴⁵² The Action Group (AG), led by Obafemi Awolowo and born in the West to forestall Igbo control, overtly promoted Yoruba identity. In the North, the Northern People's Congress (NPC) was even more exclusive, explicitly allowing political membership only to those individuals originating from a northern indigenous group. In practice, only Hausa-Fulani leaders directed the NPC, Tafawa Balewa being its main representative. During the 1950s and until 1966, these three parties constituted the core of Nigerian political life both nationally, at the level of the central government and regionally, forming respective local oppositions and coalitions.

A year before independence, at the 1959 elections, none of the three parties won a majority at the central level. This led the two parties that won most seats, the NCNC and the NPC, to form a governmental coalition, with an Igbo president, Azikiwe, and a Hausa-Fulani prime

⁴⁵⁰ Adebayo, *Managing Conflicts in Africa's Democratic Transitions*, 50–55.

⁴⁵¹ Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa.*, 1964, 597.

⁴⁵² *Ibid.*, 599–606.

minister, Balewa. Despite repeated frictions the alliance continued to function until 1964, when, following the release of the population census, political and ethnic tensions started to deeply divide both the country and the regions. In the Northern Region the NPC local government did not hesitate to violently obstruct other candidates, so as to impede them on filling in their nomination papers. Before the elections even took place, these candidates were dismissed, allowing the *de facto* victory of 67 NPC candidates.⁴⁵³ Again, regional and national opposition to those results did not prevent Balewa from making official the results. The AG commissioned then what came to be known as “operation wetie”. The operation consisted, very simply, in setting political opponents’ and supporters’ properties on fire.⁴⁵⁴ As a result, Akintola, the successor of Awolowo at the leadership of the AG, was accused of electoral fraud and was in fact assassinated some months after. Violence spread all over the country.

In January 1966, a military coup was organised. The coup was directed by a group of Igbo militaries who sought to reassert Igbo predominance within national institutions and to exclude Hausa-Fulani from state offices. General Ironsi, who, for a very short time, became head of state, led the coup. The Igbo attempt was, however, frustrated a few months later, in June 1966, when a group of militaries originating from small Northern minorities directed a second coup. Interestingly, as Ademoyega, one of the officials in charge of the second coup later stated in his memoirs, many saw the second coup as a way to bring about revolution in what had been for decades an Igbo dominated land.⁴⁵⁵ General Gowon instantly proclaimed himself head of state of the newly formed military government.

Hierarchical membership led to an escalation of violence and tensions throughout the country. General Gowon set up a policy of what he termed “de-igboisation”, dispossessing Igbo people of their lands and discarding them from governmental and high positions, while favouring instead constitutional dialogue with the AG.⁴⁵⁶ At the same time, violence erupted in the Northern Region where, between May and September 1966, 80 000 to 100, 000 individuals identified with Igbos and other Eastern group minorities were killed.⁴⁵⁷ Colonel Ojukwu, who had been previously appointed military governor of the Eastern Region by Ironsi, called for

⁴⁵³ Adebayo, *Managing Conflicts in Africa's Democratic Transitions*, 67.

⁴⁵⁴ Ibid., 57.

⁴⁵⁵ Ademoyega, *Why We Struck*.

⁴⁵⁶ Melson and Wolpe, *Nigeria*, 1971, 657.

⁴⁵⁷ Hill, *Nigeria since Independence*, 52.

Igbos living outside the Eastern Region to *return* to their land of origin. Around one million Igbos responded to his call.⁴⁵⁸

On 27th May 1967 the Eastern region declared secession from Nigeria and the consequent formation of the Independent Republic of Biafra, in the name of self-determination. Gowon declared the act unconstitutional. The newly proclaimed “Republic” was totally isolated when the civil war started. Its isolation lasted for three years, until 1970, when the Igbo “rebels” laid down their arms.⁴⁵⁹ Interestingly, in 1967 Gowon justified the use of arms against the seceding Igbos by support of the constitutional understanding of rights. Following the recommendations of the British-led Wikkink Commission, both 1960 and 1963 constitutions contained provisions about human rights, based on the partial appropriation of certain clauses stated within the 1948 Universal Declaration of Human Rights.⁴⁶⁰ Ten rights were actually recognised within the two constitutions, out of twenty-eight stated within the Declaration.⁴⁶¹ However, in both constitutions the legal clause on the recognition of human rights proclaimed the possibility for state authorities to derogate from the respect of certain fundamental rights in so-called “emergency situations”.⁴⁶² Those special rights from which derogation was possible were the right to life, the right to personal liberty and, importantly for us, the right not to be discriminated. A simple decision of the parliament sufficed to establish such derogation. In 1967 Gowon proclaimed nationally a situation of emergency. This was the eve of the Biafran civil war.⁴⁶³

Highlighting practices of hierarchical membership: the case of the Igbos

The general picture regarding membership practices and the understanding of rights in the first years of independent Nigeria appears to be fairly complex. Practices of hierarchical membership were set up with the assistance of several legal provisions. The content of the formed categories was in continuity with previous imperial politics. Hierarchies at first followed imperial lines, but soon after independence started to fluctuate, reflecting changing political coalitions. The Nigerian political landscape in fact rapidly changed between the first

⁴⁵⁸ Melson and Wolpe, *Nigeria*, 1971, 653–656.

⁴⁵⁹ Bettati and Kouchner, *Le Devoir D'ingérence*.

⁴⁶⁰ Ibhawoh, *Imperialism and Human Rights*, 166.

⁴⁶¹ Clauses 17-27 in the 1960 Constitution and Clauses 18-28 in the 1963 Constitution.

⁴⁶² Clause 28 in the 1960 Constitution and Clause 29 in the 1963 Constitution.

⁴⁶³ Critchley, “The Nigerian Civil War.”

years of independence, and the years preceding the Biafra war. It was the 1963 elections perhaps that constituted, however, the major turning point. While 1960 independence was set in continuity with colonial culture and hierarchical membership, 1963 crystallised the changing demographic and political game, the Hausa-Fulani becoming politically, socially and economically the dominant ethnic group in Nigeria.⁴⁶⁴

Before independence and until 1963, Igbos constituted the top of the pyramid of membership rights. During colonial rule, they were favoured as to their presence within political and economic institutions resulting from their close collaboration with British officials.⁴⁶⁵ The Yoruba were second in the hierarchy, followed by the Hausa-Fulani, largely viewed as poor and uneducated.⁴⁶⁶ In the 1950s, several minority groups living in the middle of the colony had organised to set up a political party and seek greater recognition. These were the same groups later seeking for the creation of a fourth region in independent Nigeria.⁴⁶⁷ Other minorities were largely unrecognised, unless closely collaborating with Igbos and thereby with the British authorities. Consequently, despite being acknowledged within censuses, individuals not identifying with one of the three constitutive ethnic groups of Nigeria were simply not granted political recognition. Conversely, because the British allocated political representation, as well as social and economic advantages on collective grounds, individuals of Igbo, Yoruba and Hausa-Fulani origin were allowed or denied, in the name of their affiliation, access to specific entitlements.

Until 1959, the colonial, ethnically based recognition system remained practically unchanged. Yet with the 1959 elections, Igbo political élites realised that if they wanted to maintain their power they had to constitute an alliance with a numerically strong political party. Because of the electoral law established by British officials, granting more seats at the Parliament to the most populous region, the Igbo-led NCNC decided for an alliance with the NPC, the Northern party. The Yoruba were bluntly relegated to the bottom of the scale, being forbidden to join national political bodies and cabinets.⁴⁶⁸

⁴⁶⁴ Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa.*, 1964, 602–605.

⁴⁶⁵ The history of the last years before independence and of its political practices is traced in detail in Lynn, “The British Empire in the 1950s,” Chapter “British policy and Nigeria in the 1950s.”

⁴⁶⁶ Melson and Wolpe, *Nigeria*, 1971, 9.

⁴⁶⁷ Coleman and Rosberg, *Political Parties and National Integration in Tropical Africa.*, 1964, 606–610.

⁴⁶⁸ Melson and Wolpe, *Nigeria*, 1971, 632.

In parallel, each region had at its own level different hierarchies reflecting internal systems of coalition and cooperation. In the Western region for example, Yorubas regularly prevented all Igbos from access to residence certificates and social services, as under colonial rule. In the Northern Region, in turn, individuals identified with the Igbo people were granted access to political representation. The Yoruba, however, were generally excluded from membership within the local political community, through more, or less, violent means. *In fine*, in the Eastern Region Igbos primarily favoured those minorities that collaborated with them, while from 1959, physically and administratively excluding Yoruba individuals.

After the release of the 1963 census, though, the Nigerian political and social landscape changed. Fearing the predominance of the Hausa-Fulani and other northern groups, Igbos sought to reassert their leadership at the central level. Inevitably, the census marked the end of the political coalition between the Igbos and the Hausa-Fulani. The rapidity of these events led to an escalation of violence, directed in particular against Igbos who, in 1966 sought to reassert their dominance through a military coup. In 1966, the Hausa-Fulani were excluded from any official position and, at the regional level, Igbos started to threaten all those individuals that contested the new homogenising policy, notwithstanding their ethnic affiliation.⁴⁶⁹ In turn, those individuals identified with Igbos living in the Northern Region were harassed, dispossessed of their belongings and sometimes killed. Northern groups perceived them as the cause of their exclusion and oppression over decades. In the North, Igbos could not have access to residence certificates allowing them to vote, and they were excluded from any social or educational service. These local exclusions had implications nationally. By being denied residence certificates locally they could not exercise their right to vote nationally.

With the second coup, those exclusions were extended to all individuals identified with the Igbo community living outside the Eastern region. Nationally, the Igbos were simply excluded from any type of political representation. The new military junta set up a strong anti-Igbo policy. In turn, within their region of “origin”, Igbos enjoyed the support of a very limited number of minorities – the Efik and the Ijaw. Individuals identifying with other

⁴⁶⁹ Glickman, *Ethnic Conflict and Democratization in Africa*, 318–319.

groups that did not collaborate with the Igbos were, if they had not left before, repeatedly harassed.⁴⁷⁰ Such violent practices went on until the Eastern Region declared its secession.

While Nigeria presented the most violent array of practices of hierarchical membership developed in the newly independent states formerly under British rule, those practices were not as violent in all British colonies. In Kenya, for example, President Kenyatta managed to maintain an equivocal position in the early years following independence. Constantly referring to the equality and inclusion of all Kenyans, in practice Kikuyu individuals were privileged, though these practices were not legally articulated, or clearly institutionalised.⁴⁷¹ In their first years of existence as independent states, Nigeria and Kenya were representatives of two distinct patterns. In-between these cases, a wide range of more, or less, discriminatory practices emerged during the politics of state formation of African states, formerly British colonies. In Uganda for example, as in Nigeria, hierarchical membership led to the extensive use of violence. The manifestation of hierarchical membership as well as their degree of institutionalisation changed from state to state, according to local histories and decolonisation experiences.

The case of Nigeria is particularly interesting for this thesis, as the increasing use of domestic violence and the Igbos' declaration of secession as an ill-treated Nigerian minority opened up, again, questions about the meaning of self-determination. The act of (unrecognised) secession was grounded in the same phrase, "self-determination," that less than a decade earlier had been embedded in the language of human rights. At the UN, the matter was carefully avoided: self-determination concerned alien subjugation and state formation after empire. It did not relate to the rights of minorities within states.⁴⁷² A whole range of other international actors underlined, however, that the question of self-determination had not just been solved with the end of decolonisation:

"For Biafra's supporters, the carving of a new state out of the remnants of Nigeria offered an opportunity to challenge the dominant conception of self-determination as nothing more than an act of decolonisation. To backers of Nigeria, Biafra was an omen of things to come if more expansive

⁴⁷⁰ Melson and Wolpe, *Nigeria*, 1971, 652–657.

⁴⁷¹ For more details on Kenyan politics of state formation see: Ogot and Ochieng, *Decolonization & Independence in Kenya, 1940-93*, 1995.

⁴⁷² "The right of peoples to self-determination", memorandum by the Secretary General, Mission on human rights, 2 April 1952.

definitions of self-determination gained traction in international law and state practice, threatening state fragmentation and the balkanisation of the African continent.”⁴⁷³

Meanwhile, non-governmental organisations such as Médecins Sans Frontières and the International Committee for the Red Cross raised international awareness on the treatment of populations within domestic borders. MSF in particular propounded humanitarian intervention in Biafra in the name of that very right to self-determination and human rights that had been crafted over the first two decades following World War II.⁴⁷⁴ The “Charter pluralism” that characterised the UN in the Cold War era, however, marked, in the name of sovereign equality, the reluctance of the organisation to “question seriously the democratic or humanitarian credentials of its members.”⁴⁷⁵

Post-Colonial Order and the (Supposed) End of International Hierarchies?

In the 1960s, as self-determination had been allocated through international ruling, every internationally recognised state was an equal member of the UN. As such, it enjoyed the same rights and prerogatives as other members: sovereign equality and non-interference. When self-determination was recognised for territories formally under colonial rule, what happened there domestically was thus not to be a matter of primary concern for the UN. However, I want to suggest here that international society’s detachment, for example as with regards to Nigeria, by no means signified the end of international judgements as to domestic practices.

Most visibly, as post-colonial scholars argue, hierarchies of status between new and old states were replaced by arguments about the economic development of the “Third World,” made by the World Bank and the International Monetary Fund.⁴⁷⁶ International financial institutions required post-colonial states to adapt (and “develop”) towards a market economy. A strong reaction against this form of dominance came in the 1960s and 1970s from post-colonial Asian and African states, calling for economic self-sufficiency, through, for example, the establishment of the New International Economic Order.⁴⁷⁷

⁴⁷³ Simpson, “The Biafran Secession and the Limits of Self-Determination,” 338.

⁴⁷⁴ The point is made in the words of the two founders of MSF. See: Bettati and Kouchner, *Le Devoir D’ingérence*.

⁴⁷⁵ Simpson, “The Biafran Secession and the Limits of Self-Determination,” 540.

⁴⁷⁶ See for a comprehensive argument on the matter: Cheru, “Structural Adjustment, Primary Resource Trade and Sustainable Development in Sub-Saharan Africa.”

⁴⁷⁷ For a discussion on economic self-determination, see: Mayall, *Nationalism and International Society*, 1990.

In this space, though, I would like to discuss an aspect related to political, rather than economic self-determination. When compared to the interwar years, and then later to the 1990s, the Cold War seems to represent some sort of historical parenthesis as far as the politics of self-determination are concerned - a parenthesis during which, in international practice, judgement on domestic order was restrained. At the same time, though, from 1960 onwards, self-determination came to be entrenched, as we have seen, in the international human rights regime. All “people” around the globe were entitled to choose their own form of government in the name of self-determination. However, the very same principle was concurrently being assimilated within a wider liberal discourse at the UN, through its association with human rights - and thereby with the protection of individuals and their rights beyond state boundaries. In other words, whereas domestic societies were theoretically entitled to exercise their free political will, self-determination was also entrenched within a specific normative universe restricting, in some sense, the range of legitimate political practices and identities. This was – and still is - a normative arrangement to which old and new states had to formally agree (rather than, perhaps, conform to) as a requirement for membership in international society.

Hence, I endorse the argument previously advanced by other scholars: that human rights came to represent, after 1945, a new standard upon which a judgement on the domestic behaviour of (old and new) states could be made.⁴⁷⁸ This judgement has coincided with the international definition of appropriate identity and behaviour, through the globalisation of a certain, liberal, order at the UN. This normative development, however, has also been paralleled by the global formalisation of yet another set of norms on state freedom and sovereign equality. This type of normative contradiction, Stephen Krasner tells us, should certainly not come as a surprise as, the international system has been characterised historically by a “variety of often mutually inconsistent principles that have been used to legitimate policy.”⁴⁷⁹ In a way not dissimilar to Krasner Reus-Smit has argued (though this has led him to different implications) specifically for the post-1945 era that an “inherently contradictory modern discourse” reuniting sovereignty and human rights as two elements of a single conception of order has characterised international relations.⁴⁸⁰

⁴⁷⁸ See in particular: Vincent, *Human Rights and International Relations*; Donnelly, “Human Rights,” 1998; Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002.

⁴⁷⁹ Krasner, *Sovereignty*, 74.

⁴⁸⁰ Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001, 519.

In the years following 1960, post-colonial territories thus gained their right to self-determination and independence in an international context characterised by an ambivalent discourse. This has been a discourse revealing on the one hand logics of toleration of diverse domestic practices and identity, and on the other, liberal expectations about appropriate domestic order accompanied by an intolerance towards those that do not conform. It is my sense that this has been an ambivalent discourse that the post-colonial understanding of self-determination has fully embodied. On the one hand, self-determination has implied the idea (and practice) of free political will, without interference. On the other hand, at the UN self-determination has been associated with the language of human rights and thus to a specific set of expectations about appropriate behaviour and identity.

Whereas international concern about domestic behaviour was not necessarily translated into practice after 1960, I want to make the point, here, that judgements on the matter took more elusive forms following the apogee of decolonisation. With decolonisation, supervisory regimes retreated, due to norms of sovereign equality and non-interference upheld at the UN, but perhaps also because decolonisation was occurring beyond the eastern and western blocs. While hierarchies were not mentioned in practice, not after the redefinition of the international order in egalitarian terms, hierarchical worldviews took more ambiguous forms. Although this is a tentative proposition that I do hope to develop in later work, it is my sense that, specifically in relation to human rights, hierarchical views were reconstituted in scholarly arguments.

In fact, it was in the 1980s that several liberal authors proposed to explicitly distinguish states according to their internal, *democratic*, organisation.⁴⁸¹ For Anne-Marie Slaughter, for example, the presence of a representative government, of separate powers, and the constitutional guarantee of political rights define the liberal state, and concurrently allow for the distinction between those who conform or not to such a definition.⁴⁸² Following from this distinction, namely from the internal characteristics of a state, she assumed that it was possible to “determine a state’s standing in the family of nations.”⁴⁸³ More relevant for us is, perhaps, the work of John Rawls. In his article *The Law of Peoples*, Rawls distinguished three

⁴⁸¹ Reisman, “Sovereignty and Human Rights in Contemporary International Law”; Rawls, “The Law of Peoples,” 1993; Slaughter, “International law in a world of liberal States”; Rawls, *The Law of Peoples*, 1999.

⁴⁸² Slaughter, “International law in a world of liberal States,” 511.

⁴⁸³ Simpson, “Two Liberalisms,” 537.

types of societies in international relations: the liberal that conforms to international norms and expectations, the semi-liberal that purports illiberal measures but does not represent an international threat (how that could be established though, is not clear) and the illiberal states.⁴⁸⁴ A few years after, Rawls expanded these categories in a book, *The Law of Peoples*. In it, he advanced a categorisation of states into five groups: “reasonable liberal peoples,” “decent peoples,” (some of which are hierarchical), the outlaw states, societies burdened by unfavourable conditions, and benevolent absolutisms.⁴⁸⁵

Interesting for us, he proposed that we should think in terms of “burdened societies.” These are societies that, because of unfavourable conditions, are unable to conform to international norms and thus need the support of other liberal states.⁴⁸⁶ He also advanced a second, very ambiguous category: that of “decent hierarchical peoples.” Rawls describes these as well ordered yet hierarchical societies that the liberal system could tolerate. In the name of “self-determination,” decent hierarchical societies in fact “should be able to have the opportunity to decide their future for themselves,”⁴⁸⁷ without external interference. These two categories, and the last in particular, cannot but evoke the situation of numerous post-colonial states in which hierarchical membership endured, at times more, at times less explicitly, after international ruling. Tolerated internationally, only later was their domestic order called into question. Towards the end of the 1980s and the start of the 1990s, hierarchies within international society took, again, more explicit forms, with respect to the treatment of domestic populations. The normative foundations for such hierarchies, though, as I hope to have shown over the past two chapters, had already been set internationally after 1945 and later confirmed, in 1960.

Conclusion

Post-colonial states that emerged after international ruling were founded on the right of self-determination, strongly governed by liberal norms. However, I have argued, when in Africa newly “self-determined” states came to draw the boundaries of their political communities, hierarchy often prevailed over equality. This did not conform to international conceptions of

⁴⁸⁴ Rawls, “The Law of Peoples,” 1993, 37–38.

⁴⁸⁵ Rawls, *The Law of Peoples*, 1999, 4.

⁴⁸⁶ Rawls, “The Law of Peoples,” 1993, 4–5.

⁴⁸⁷ Ibid., 85.

rights, self-determination and the model of the nation-state. Hierarchy in the form of a legacy of empires had, however, endured, domestically, both in the understanding of membership and allocation of rights. This was the case in particular in those areas where colonial rule had come to an end in a peaceful manner, after resolution 1514. In former French colonies, I have suggested, hierarchy was often vested in inherited assimilationist practices. Former British colonies, instead, presented relatively institutionalised practices of hierarchical membership, inherited from the pre-existing imperial regime of *divide and rule*. The case of post-independence Nigeria, I have shown, was striking. In the first years following independence, hierarchical membership was highly formalised, leading to the extensive use of violence and to the re-emergence, domestically, of self-determination claims.

Simply, with the end of colonial rule, the matter of self-determination had not been solved. As in 1919, international expectations attached to the idea of self-determination as associated at the UN with the human rights regime were not met. Norms of sovereign equality and non-interference, however, largely characterised the Cold War international environment. Perhaps more precisely, in practice, in the words of John Vincent, “the loose bipolar system (had) intervention within the blocs, non-intervention between them, and a tenuous non-intervention prevailing outside them.”⁴⁸⁸ Accordingly, the UN restrained itself from pronouncing judgements on the organisation of domestic orders. This, however, I have suggested, did not signify that hierarchical worldviews simply disappeared. Though in a more tentative form, hierarchical worldviews were reconstituted, for instance, in the arguments of numerous scholars.

⁴⁸⁸ Vincent, *Nonintervention and International Order*, 353.

PART THREE

Solving Claims of Self-Determination: International Involvement in the Dissolution of Yugoslavia

In the decades following the enactment of resolution 1514, it was widely assumed, or hoped perhaps, that decolonisation would bring to an end the complicated question of self-determination. The crisis in Biafra had certainly marked a parenthesis, but one that was promptly closed in the name of both non-interference and sovereign equality. After 1960, several international documents continued to make reference to the idea. First, in 1966, self-determination was embedded in the language of human rights (art.1, ICCPR and ICESCR). Later, in 1975, the Helsinki Final Act of the Conference of Security and Cooperation in Europe (CSCE), confirmed self-determination's application beyond the colonial context. Though, as Martti Koskenniemi has said, it is debatable "whether that statement of principle was intended to be taken literally."

With the dissolution of Yugoslavia at the start of the 1990s, claims of self-determination in the name of ethnicity emerged again internationally. Not without difficulties, in 1919, the Paris peacemakers had directed the principle of self-determination to the Balkans, hoping to guarantee a smooth transition from imperial authority to new nation-states. Following the breakdown of the Austro-Hungarian and Ottoman Empires, the principle had therefore been used, in spite of its flaws, to unify the South Slavs into one state. Less than a century later, that same idea was invoked to justify, in the same region, ethnic division. The dissolution of what had been, since the end of World War II, the multinational federation of Yugoslavia, was furthermore accompanied by widespread violence. Only months earlier, in 1990, in Paris, member states of the CSCE had stated their ideological commitment to democracy and human rights through the endorsement of the Charter for a New Europe. Certainly, such commitment was not without incongruities. Whereas the Paris Charter depicted a common liberal identity for European countries, some of these states supported, directly or indirectly, authoritarian and discriminatory practices abroad, and even at home.⁴⁸⁹ Still, the Charter stressed a specific

⁴⁸⁹ For instance, and these are only a few examples, West Germany supported the apartheid regime in South Africa; Britain supported Pinochet's Chile; in Italy the operation "mani pulite" then started to uncover the state of corruption and official misconduct that characterised Italian institutions, economic and political bodies during the 1970s and 1980s.

promise for a common future and yet, in practice, the opposite was occurring and at the heart of Europe.

When the Croatian and Slovenian federal republics of Yugoslavia started to show the first signs of their will to proclaim independence in early 1990, international responses to such claims were altogether negative. A year and a half later, in August 1991, when violence and exclusion had by then spread throughout the whole of the Balkans, the European Community (EC) decided to create a special EC arbitration commission on the events, best known as the Badinter Committee. On 7th September 1991, the European Conference on Yugoslavia began. Led by former British Foreign Secretary Lord Carrington, the Conference was composed of EC mediators and of all the representatives of the parties involved: the Yugoslav delegates and the representatives of each constituent republic. The primary task of the Conference was to establish a ceasefire in Croatia. In late autumn however, it was clear that the dissolution of Yugoslavia was an unstoppable process. The Conference thus invited the EC Commission to intervene more directly, in the form of international “opinions,” on the events. The Commission was asked to pronounce on the scope and application of the right of self-determination in the Balkans.

Much of the scholarship on the break-up of Yugoslavia is concerned with underlining the incorrectness or the illegitimacy of the opinions of the EC Commission. Whether the Commission had the right to pronounce on such matters, whether it facilitated the break-up of Yugoslavia, are recurrent debates in the literature.⁴⁹⁰ Everyone seems to be concerned with stressing how flawed the role of international society was.⁴⁹¹ While this might be true, I suggest that these views tend to obscure the fact that the very establishment of a conference indicates international society’s willingness to delineate, again, the boundaries of self-determination, and the ensuing international expectations. As it became accepted, perhaps reluctantly, that self-determination was to be, again, the principle at the base of a new wave of state formation, the standard of legitimate statehood and membership in international society had to be redefined.

⁴⁹⁰ This is equally the case in Political Science, Political Theory and most importantly International Law. See, respectively for each discipline: Lucarelli, *Europe and the Breakup of Yugoslavia*; Radan, “Post-Secession International Borders”; Ratner, “Drawing a Better Line.”

⁴⁹¹ A very recent counter-example being Navari, “Territoriality, Self-Determination and Crimea after Badinter.”

Possibly because of the very nature of the task, discussions on self-determination's normative components were, in the early 1990s, better articulated than they had been in the past. In giving its opinions, the EC Commission in fact explicitly addressed the three questions that had historically animated debates over self-determination's meaning: whose claims of self-determination should be recognised? What rights did self-determination entail? What would the implications be, once statehood would be recognised (and thus what should be the responsibilities correlative to such rights)? It soon became clear that, to a certain extent, answers to the first two questions had already been defined by the claimants. More centrality was in turn attributed (for much of the next two decades) to the third dimension, namely to the correlative responsibilities defining what good, or perhaps tolerable, domestic order was to be, for a state to be deemed a legitimate member of international society.

However, as I shall argue in this and the next chapter, these delineations were undertaken on very contradictory grounds, that would determine the nature of later international involvement in the area. The reasons for that were twofold. First, a sharp divide separated domestic practices of self-determination from international ideas about it. Second, and importantly, another tension characterised the relationship between the international normative environment in which these ideas were embedded, and international practices of self-determination. Whereas the former stressed non-interference, human rights and an ethnically blind conception of the polity (coinciding with Europe's ideological commitment to democracy and human rights) the latter were characterised by the recognition of ethnic groups and thus, in turn, of some of their claims.

Accordingly, the purpose of this chapter is to establish an understanding of the two tensions that underlined international society's delineation of self-determination as the newly found standard of legitimate statehood and membership in Europe. The implications of these contradictions will be the object of the following chapter. To do so, I begin by providing an historical context within which to understand the emergence of national claims of self-determination. Unlike in the case of the two previous waves of expansion, this time it was domestic claims that prompted an international reaction and for this very reason, these claims need to be first explicated. I will then go on to describe international society's confused attempt to set the standard of self-determination and grant new meaning to its historical components.

The Historical Presence of Self-Determination and Ethnicity in Yugoslavia

The life of the Kingdom of Yugoslavia, formed after World War I, came to an end officially in 1943. That same year, Ante Pavelic, leader of the fascist Ustasa movement, proclaimed the formation of the Croatian Independent state (NDH), encompassing the territories of modern Croatia and Herzegovina. Officially formed as an Italian protectorate, the NDH played the role of a “puppet state” for Nazi Germany. The purpose of the Ustasa regime in power was to establish an ethnically self-determined Croatian state through a large-scale campaign to methodically eliminate Jews, Muslims from Bosnia, Serbs and Roma people. In parallel, within Serbia the royalists loosely reorganised around the Cetnik movement headed by Draza Mihajlovic. Fighting against the Axis powers, Cetniks had a policy of selective collaboration to the extent, Mihajlovic claimed, that it could help the emergence of a Greater Serbian state.⁴⁹² Following the Serbian Orthodox adage, *gdje je slava tu je Srbin* (“Where there is a Slav there is a Serb”),⁴⁹³ Cetniks sought to occupy all those neighbouring territories inhabited by Serbs, encompassing parts of modern Albania, Bosnia, Bulgaria, Croatia, Kosovo and Macedonia. Conversely, the project of the “Serbian nation” implied the elimination of all those internationally unrecognised minorities and recognised ethnic groups that did not share the same religion and beliefs, in particular Croats, Muslims and Roma people. Interestingly, a similar rhetoric would be adopted, fifty years later, by both Croats and Serbs.⁴⁹⁴

As a reaction to these events, as early as 1941 the Yugoslav Communist Party led by Josip Broz Tito organised its own resistance, as a fight for national liberation from those different forms of oppression. The two main objectives of the Yugoslav Partisans were the liberation of the Yugoslav territory and the establishment of a workers’ multi-ethnic state based on equality of all.⁴⁹⁵ Tito expressly encouraged the collaboration of all nationalities and communities. The victory of the partisans contributed to the triumph in 1946 of the Party’s motto, *Bratstvo i Jedinstvo* (“Brotherhood and Unity”). Although the mosaic of peoples, units and territories making up socialist Yugoslavia was confused, this mattered little, at least until

⁴⁹² Ramet, *The Three Yugoslavias*, 145.

⁴⁹³ Mylonas, *Serbian Orthodox Fundamentals*, 56. The Slava being in Serbian Orthodox church the tradition that glorifies the patron of a family.

⁴⁹⁴ See for two detailed accounts of the events of WWII in Yugoslavia: Roberts, *Tito, Mihailović, and the Allies, 1941-1945*; Tomasevich, *War and Revolution in Yugoslavia, 1941-1945*.

⁴⁹⁵ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 105–106.

1990, when competing claims to self-determination emerged again. Although internationally claims of ethnicity were after the war delegitimised, Yugoslavia represented an exception in the eyes of the Allies. First, the Partisans had fought against the Axis Powers. Second, this fight was undertaken in the name of a Yugoslav unity, in an alleged continuity with the previous Kingdom.

Self-determination, ethnicity, and socialism

At the elections held in November 1945, the Communist Party won extensively and Tito's party became virtually the sole political organisation in Yugoslavia. The formula for its victory lied in the rhetoric of national reconciliation: all the nationalities and peoples of Yugoslavia had equally fought against fascism during the war and therefore deserved to live together in a united and new Yugoslavia. The first Constitution was thus drafted in 1946. In a way not dissimilar to the "Yugomakers" in 1918, Tito proclaimed Yugoslavia as formed by the community of South Slavs peoples, equal in rights. Following article 1 of the Constitution:

"(...) Yugoslavia is a federal people's state republican in form. It is a community of peoples equal in rights who on the basis of the right of self-determination including the right of separation have expressed their will to live together in a federative state",⁴⁹⁶

In practice, Yugoslavia was constituted as a federal state composed of six Republics - Bosnia, Croatia, Macedonia, Montenegro, Serbia and Slovenia - and two autonomous entities within Serbia, which, later, were granted the status of "autonomous provinces" - Kosovo and Vojvodina. Only through the 1963 Constitution would the country become the Socialist Federal Republic of Yugoslavia (SFRY), shifting the locus of legitimate authority from the constituent peoples, to the Republics. In 1974, the Republics were renamed states.⁴⁹⁷ After World War II, with a few exceptions, the borders of the constituent republics were generally drawn following pre-World War I administrative imperial frontiers. Those changes were not regular and did not follow any specific national policy. While the boundaries of the constituent republics became suddenly crucial to delineating the borders of the post-Yugoslav states in the 1990s, the absence of consistency in the redrawing of the internal frontiers after World War II did not really matter. These were internal borders dividing federated entities,

⁴⁹⁶ Art.1, 1946 Constitution

⁴⁹⁷ Vuckovic, *Ethnic Cleavages and Conflict*, 125.

and not nation-states. As Tito proclaimed in his famous Zagreb discourse shortly after the liberation:

“ (...) The lines between the federated states in a federal Yugoslavia are not lines of separation, but of union. What is the meaning of federal units in today’s Yugoslavia? We do not consider them a group of small nations; rather they have a more administrative character, the freedom to govern oneself.”⁴⁹⁸

At the core of the Communist ideology, self-determination was promptly mentioned in the 1946 Constitution. The legal document referred to self-determination as the right exercised by the peoples of Yugoslavia to unite in a single state. Self-determination was reiterated in the 1953 Constitution and again in the fourth and last Yugoslav Constitution of 1974.⁴⁹⁹ The Constitution also mentioned the right of secession for the peoples of Yugoslavia, but not for the Republics; the right to self-determination was instead proclaimed for the six republican subunits, excluding the two autonomous regions of Vojvodina and Kosovo.

Blurring the picture even further, while six Republics existed, only five Yugoslav nations were recognised: Croats, Macedonians, Montenegrins, Serbs and Slovenes – Muslim Bosnians being excluded from such politics of recognition. “Muslims” (renamed in the 1990s “Bosniaks,” as until 1910) were recognised in the national census of 1961, yet they never became a constitutive Yugoslav nation. Interestingly, this led the Bosnian branch of the Communist party to declare at its 1964 Fourth Congress that Bosnian Muslims would eventually acquire the right to self-determination. In parallel, other minorities such as Hungarians and Albanians, named in Yugoslavia as “nationalities”, were simply denied equal rights of political representation and recognition. In addition to those pre-existing categories of ethnic identification inherited from past imperial politics of recognition, Tito added a new and more encompassing group: he created in the census the category of Yugoslav ethnicity. As Igor Stiks, “although it was possible to declare Yugoslav ethnicity, those who did so were not recognised as nations or nationalities and were thus not represented. (...) Yugoslavs simply did not have a republic!”⁵⁰⁰

In spite of its egalitarian foundations, and perhaps even in line with them, it seems that with regard to membership recognition, Yugoslavia presented a hierarchical structure. This then

⁴⁹⁸ Quoted in Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 118.

⁴⁹⁹ Ibid., 134–138.

⁵⁰⁰ Ibid., 185.

substantiates Alexander Cooley's claims that while in their ideal form federations are not hierarchies, in practice this is often blurred.⁵⁰¹ The hierarchy in Yugoslavia did not consist in the explicit predominance of one group – at least not until Slobodan Milosevic, following Tito's death in 1980, claimed that the numerical superiority of ethnic Serbs implied that they should be politically and economically favoured. Instead, it was grounded in the distinct recognition and allocation of rights to individuals in relation to the different groups they identified with and areas they lived in. The constituent Yugoslav nations in their republics ("narodi Jugoslavije") represented the most privileged group, entitled to both political recognition and their own state. The second group was composed of the Bosniak Muslims who, though not forming a constituent nation of Yugoslavia, represented the main ethnic group of Bosnia. Then followed "national minorities" or "nationalities" of Yugoslavia ("narodnosti"). These were individuals originating from Yugoslavia's neighbouring countries that after World War I had been granted recognition through the Minority Treaties. Other ethnic groups that did not officially constitute an ethnic group, such as Roma people, were the most often socially, economically and politically marginalised.⁵⁰²

By no means was it a deliberate or centralised attempt to prioritise certain groups over others, although some already argued that Belgrade and Serbian population took over the governing institutions of Yugoslavia and were granted greater entitlements.⁵⁰³ Unlike the Soviet Union, for example, ethnicity was not printed in passports and was only indicated in birth certificates and other administrative documents of domestic use. Those same documents, however, were used, after 1990, as tools of exclusion to assess one's ethnicity. Beyond the officially recognised ethnic affiliation, individuals also possessed a double citizenship: Yugoslav citizenship (internationally recognised) and that of the constituent republics. The allocation of Yugoslav citizenship was grounded primarily in the principle of origin, for anyone belonging to one of the peoples of Yugoslavia.⁵⁰⁴ Citizenship of the constituent republics depended upon the condition of residence. Generally, citizens of Yugoslavia did not bother to change

⁵⁰¹ Cooley, *Logics of Hierarchy the Organization of Empires, States, and Military Occupations*, 27–28.

⁵⁰² Valentina Burrai, "Kin-State Politics and Equal Treatment in Croatia," Paper presented at the 2009 ASN Conference, New York. Manuscript with the author. In her paper, the author suggests that Yugoslavia was characterised by a hierarchical membership regime despite it being a workers' federation.

⁵⁰³ This for example was the point made in 1968 during the "Croatian Spring movement," seeking greater autonomy for Croatia within Yugoslavia. Stiks, "A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States," 2009.

⁵⁰⁴ The principle of naturalisation could be applied for anyone born and raised on the territory of Yugoslavia. Interestingly, after the war those individuals that had collaborated with the Nazis and those of German ethnic origin were excluded from the national body politic. (official gazette 64/1945).

citizenship of the republic when they moved within the Federation as, on a day-to-day basis, it was rather irrelevant, as long as one remained within the domestic borders of Yugoslavia.⁵⁰⁵ With the dissolution of Yugoslavia, republican citizenship was used as the primary rationale to establish the new national political communities. Those who had not changed their republican citizenship when moving were therefore virtually excluded from the initial citizenry of those newly formed states.

With the break-up of Yugoslavia, claims to self-determination in the name of an ethnic norm were received, internationally, with surprise. The exclusive formation of the post-Yugoslav states was operated, domestically, in continuity with past norms and practices, in what André Liebich terms “a legal fiction of uninterrupted statehood.”⁵⁰⁶ Newly elected political élites used the three membership dimensions underlined – citizenship, ethnicity and self-determination – to justify discrimination, establish practices of hierarchical membership, and legitimise the formation of new, exclusive, states. Local nationalisms and ethnic claims to self-determination did not simply appear in Yugoslavia with the end of the Cold War. Although Tito had managed to maintain a subtle balance among all the communities in SFRY for thirty-five years – some say in harmony, others through repression – sporadic tensions had characterised the story of the Federation.⁵⁰⁷ The death of Tito in 1980 and the ensuing economic crisis into which Yugoslavia soon fell simply reinforced such claims and movements. Perhaps, then, British historian Allan Taylor made a point when he claimed that Tito was “the last of the Habsburgs.”⁵⁰⁸

The road to dissolution

The first sparks of violence started in Kosovo, in 1981. Kosovar Albanian students initiated several protests all over the province to demonstrate against their poor living conditions and seeking for Kosovo to become a Yugoslav republic. Demonstrations were violently repressed by the Yugoslav authorities, leading to a period of political discrimination towards Serbs living in Kosovo, by Kosovar Albanians. In 1984, Milosevic was elected as president of the

⁵⁰⁵ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 138–139.

⁵⁰⁶ Bauböck, Perchinig, and Wiebke, *Citizenship Policies in the New Europe*, 18.

⁵⁰⁷ Bellamy, *The Formation of Croatian National Identity a Centuries-Old Dream*, 55–56.

⁵⁰⁸ Taylor, *The Habsburg Monarchy, 1809–1918; a History of the Austrian Empire and Austria-Hungary*, 250–251.

Serbian Bureau of the League of Communists of Yugoslavia. Three years later, on an official trip to Pristina, Milosevic declared his full support for Serbs in Kosovo, against Kosovar Albanian oppression and separatism. He then claimed that the only way to solve the Kosovo question was to reduce the autonomy of Kosovo. A claim that he put into practice by abolishing the status of autonomous provinces of both Kosovo and Vojvodina, as soon as he was elected president of the republic of Serbia, in early 1989.⁵⁰⁹ A few months later, in June 1989, Milosevic went back to Kosovo. This time, he went to Kosovo Polje, the site of the famous 1389 Kosovo battle during which Serbs fought against the Ottoman army and were terribly defeated. During his commemoration speech praising Serbian national identity, he reiterated that Serbs had been oppressed throughout history and that this had to cease; that Kosovo was part of Serbia. As the banner behind him read, “Only unity saves the Serb.”⁵¹⁰

Over the years, numerous commentators on the Balkan conflicts have depicted Milosevic’s 1989 speech as preannouncing the start of the war. While this is certainly true, ethnic exclusion was as much part of Croatian rhetoric as it was of Serbian. At the end of the 1980s Tudjman presented his “Croatian national programme” and openly spoke about a Croatian nation-state. Tudjman’s views about a Croatian nation-state encompassed the region of Bosnia mostly inhabited by the Croatian community: Herzegovina. Not only did this reflect that Tudjman did not take seriously the idea of a separate Bosnia, but also his view of it as an artificial creation of the Ottoman Empire, against the historical existence of an independent Croatian state.⁵¹¹ His irredentist views also clashed with Milosevic’s expansionist project of Greater Serbia, similarly including parts of Bosnia and Croatia. Both Croatian and Serbian officials had their respective views as to whether Muslims from Bosnia were (are) either Croats or Serbs. To be sure, this raised the concern of Muslim politicians in Bosnia, who sought recognition as a constituent people of Yugoslavia. That 12.1% of the population of Croatia identified with Serbian ethnicity was a further obstacle to Croatian independence aspirations.⁵¹² With the opening of Yugoslavia to party pluralism in 1988, and the creation, the following year, of Tudjman’s own right-wing conservative party, Belgrade started to look at his claims with increasing suspicion.

⁵⁰⁹ Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 189–200.

⁵¹⁰ mentioned in Rae, *State Identities and the Homogenisation of Peoples*, 2002, 188.

⁵¹¹ These points are discussed in Bellamy, *The Formation of Croatian National Identity a Centuries-Old Dream*, chapter 2 in particular.

⁵¹² Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 178.

Yugoslav and Serbian officials though were not the only ones worried by Croatian nationalist and irredentist views. In Bosnia too, Muslim politicians started to fear Croatian as well as Serbian aspirations. In turn, as early as 1987 Slovenia had set up a “national programme.”⁵¹³ With less than 10% of the total population of Yugoslavia, Slovenia produced more than a fifth of the national GDP. In the context of economic crisis and high inflation, Yugoslav authorities feared that Slovenia might acquire greater autonomy.⁵¹⁴ Montenegro and Macedonia were instead the only two republics without a clear political project of self-determination. Particularly in Montenegro, many of the officials were pro-Serbian.⁵¹⁵ Meantime, Milosevic put forward his views on Serbian superiority, veiled by a discourse grounded on Yugoslav unity. In Belgrade, then capital of both Yugoslavia and of the socialist republic, he started to methodically blur the boundaries between SFRY’s and Serbia’s entitlements.⁵¹⁶

Within this context, the first multi-party parliamentary and presidential elections were organised in each constituent republic. In Croatia, Macedonia and Slovenia, right wing coalitions won. In Bosnia, Izetbegovic’s party emerged as the largest in the Republic. In addition to Serbia, it was only in Montenegro that the League of Communists won again, functioning in close collaboration with Milosevic’s party, the SPS – Socialist Party of Serbia, which had won in spite of denunciation of several irregularities in the ballot. Albanian Kosovars also decided to hold a referendum in July, asking the population to vote as to whether Kosovo should become a constituent republic part of the SFRY. The Serbian Parliament responded by suspending the provincial assembly and thereby annulling the referendum.⁵¹⁷

Tudjman and Kucan feared that this could also be Milosevic’s plan for, respectively, Croatia and Slovenia. For more than a year, Slovenian and Croatian national delegations to the Yugoslav League of Communists proposed to federal authorities the transformation of Yugoslavia into a confederation of sovereign states. Milosevic was of course very reluctant towards the idea. In April 1991, both Croatian and Slovenian authorities decided to hold referenda on independence. In Croatia, 97.4% of the population declared itself in favour of

⁵¹³ Ibid., 209.

⁵¹⁴ Ibid., 241.

⁵¹⁵ Lukic, *L’agonie yougoslave (1986-2003)*, 378.

⁵¹⁶ Pavkovic, *The Fragmentation of Yugoslavia*, 98–110.

⁵¹⁷ Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 234–249.

Croatian self-determination – even though the Serbian minority boycotted the referendum. In Slovenia, 86% of the population pronounced itself in favour of independence.⁵¹⁸ Unwilling to delay their respective declarations of independence, and aware of the increasing power that Milosevic was acquiring, Slovenia and Croatia proclaimed their independence on 25th June 1991. Croatia and Slovenia were the first two constituent republics of Yugoslavia to secede.

Both Tudjman and Kucan proclaimed independence in the name of the will of their respective people, explicitly framed as the right of their people to self-determination exercised through what they described “democratic elections.”⁵¹⁹ However, both declarations contained explicit references to a very exclusive understanding of the “nation” as defined in ethnic terms. The Slovenian declaration stressed from its first paragraph a clear analogy between natural law and the right of the “Slovene nation” to self-determination. The Croatian declaration repeatedly referred to the historical right of Croatia to self-determination.⁵²⁰ One year earlier though, the Constitutions of the socialist republics of Croatia and Slovenia had already defined each “nation” in ethnic terms.⁵²¹

A Confused International Reaction:

Self-Determination and the Recognition of New States

When Croatia and Slovenia started to show the first signs of their intent to proclaim independence in early 1990, international response was altogether negative. The EC, the CSCE (future OSCE), the UN, the USA, and other European states, in particular Belgium, France, Germany, Italy, Luxembourg and the UK,⁵²² promised that if unity were to be preserved and democratisation extended, Yugoslavia would receive financial assistance and

⁵¹⁸ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 280,294.

⁵¹⁹ Following the Preamble of the Croatian Constitution of 1990: “At the historic turning-point marked by the rejection of the communist system and changes in the international order in Europe, the Croatian nation reaffirmed, in the first democratic elections (1990), by its freely expressed will, its millennial statehood and its resolution to establish the Republic of Croatia as a sovereign state.”

⁵²⁰ Both declarations of independence are available online. For Croatia: http://narodne-novine.nn.hr/clanci/sluzbeni/1991_06_31_875.html and for Slovenia: <http://www.slovenija2001.gov.si/10years/path/documents/declaration/>

⁵²¹ Cf. preambles of both Constitutions, enacted in 1990.

⁵²² The states and institutions above mentioned are those that were most actively involved in the first phase of the dissolution of Yugoslavia. Although the term is highly contested in academia, these actors referred to themselves as “international community.” The phrase does appear in UN/EC texts and resolutions.

trading concessions.⁵²³ However, after Croatia and Slovenia declared independence from Yugoslavia on 25th June 1991, international discourse, so far unified, simply fragmented. Certain states such as Germany and Italy supported a faster recognition of Croatia and Slovenia as sovereign states, perhaps also to avoid the development of further violence. Violent acts had in fact started just a few days after the two declarations of independence, between, respectively Slovenian and Croatian military separatist forces and the Yugoslav Army (JNA). Over the months preceding the declarations of independence, Croatia, Slovenia, Montenegro and Serbia had all diverted their funds for development to purchasing military armaments.⁵²⁴ Unlike Germany and Italy, the EC, the UN and individually France, the UK and USA upheld the need to reform Yugoslavia, by giving each republic a greater autonomy, circumventing the actual breakup of the Federation.⁵²⁵

The EC then proposed to set up a special agreement. The purpose of the Brioni agreement, signed on 7th July 1991, was twofold. First, it offered time to all the parties involved to consider the course of the events and the consequences of their claims and aspirations. This was accomplished as Croatian, Slovenian and Yugoslav authorities agreed for a three-month moratorium on all armed and state-building activities. Slovenia and the JNA agreed specifically to terminate all armed activities. The Brioni agreement concurrently marked the end of the short war in Slovenia. Croatia acknowledged a freeze on all independence activities until 7th October 1991. Yet, while during these three months Tudjman's government did not entrench Croatian independence through legal means, violence did increasingly burst out between Croats and ethnic Serbs living in Croatia, the latter with the support of Slobodan Milosevic. The moratorium also served another purpose. It gave more time to international society to decide on what the international response to the Yugoslav crisis should be.

In August 1991 the Council of Ministers of the EC decided to create a special arbitration commission on the events, best known as the Badinter Committee. A month later, Lord Carrington inaugurated the European Conference on Yugoslavia, composed of EC mediators and all the representatives of the parties involved: the Yugoslav delegates and the representatives of each constituent republic. A year later the Conference would be renamed

⁵²³ Touval, *Mediation in the Yugoslav Wars*, 19.

⁵²⁴ Stiks, "A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States.," 2009, 252.

⁵²⁵ See Owen, *Balkan Odyssey* In his memoirs David Owen (later in charge of a Bosnia peace plan) presents a detailed account of initial disagreements within international society.

the International Conference on Yugoslavia, combining the work of the EC, the UN, the OSCE and the Organisation of the Islamic Conference.⁵²⁶ It seems interesting to note that in 1991, only a small group of states, calling itself “international community,” was to undertake the task of dealing with the Balkan question.⁵²⁷ Almost ironically, this echoed the post-World War I settlement, when the Great Powers, deeming themselves more mature than other states, had defined the standards of legitimate statehood and membership for post-imperial states in the family of nations.

Initially, much of the Conference activity was concerned with establishing a ceasefire in Croatia, where violence was constantly increasing. In November, following the end of the moratorium established three months earlier by the EC, Croatia and Slovenia continued their respective state-building activities, joined by Macedonia and, increasingly, Bosnia. Indeed, Macedonia held its referendum on independence on 8th September 1991, even though it was recognised by the EC only in 1993.⁵²⁸ Bosnia enacted a memorandum on sovereignty on 14th October 1991, while the independence referendum was held several months later, between 29th February and 1st March 1992 – the same day on which the war officially started in Bosnia. Serbia contested these acts, describing them as unconstitutional.⁵²⁹ Yet, the new Constitution of the Republic of Serbia enacted by Milosevic in 1990 presupposed that the president of Serbia could unilaterally decide to proclaim the start or end of any war involving the whole or part of Yugoslavia.⁵³⁰ Worried by the potential consequences of these acts and decisions, the European Conference invited the Arbitration Committee to intervene more directly on these matters, from late autumn 1991. Such intervention would take the form of legal *opinions*. No formal procedure was established as to how these should be sought and answered. The only thing that was clear though was that the Conference would use them as grounds to settle the Yugoslav question.⁵³¹

⁵²⁶ United Nations, “UNITED NATIONS,” 1552.

⁵²⁷ Although the term is highly contested in academia, the EC, the CSCE (future OSCE), the UN, the USA, and other European states, in particular Belgium, France, Germany, Italy, Luxembourg and the UK were all actors that understood themselves as such (throughout the period, the term appears in official international documents too).

⁵²⁸ Greece in fact repeatedly refused to recognise Macedonia for its historical territorial disputes dating, at least, from the post-World War I settlement and population exchange agreements.

⁵²⁹ Fabry, *Recognizing States*, 190.

⁵³⁰ Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, 234.

⁵³¹ Navari, “Territoriality, Self-Determination and Crimea after Badinter,” 1300.

The content of the opinions

Between the end of 1991 and the middle of 1993, Lord Carrington asked the Arbitration Committee, in the form of specific questions, to give its opinion on what were described as ten major legal matters on the SFRY.⁵³² The opinions all dealt with the application of the right of self-determination to the region and, I shall argue, with the understanding of its normative components: people, rights and responsibilities. Lord Carrington presented the first three questions to the Commission on 20th November 1991. Lord Carrington personally addressed the first question, whereas for the following opinions, he was used as an intermediary, between the interested parties and the EC Commission.⁵³³

He first asked whether Yugoslavia still continued to exist, whether it was in a process of disintegration, or break-up. Ten days later, the Committee responded that Yugoslavia was, following Slovenia and Croatia's acts of *secession*, in a process of dissolution. Even though Lord Carrington addressed the second and third questions that same day, the Committee responded to both only later, at the start of January 1992 when violence and exclusion had by then spread throughout the whole of the Balkans. These had been addressed by the Republic of Serbia. The second question concerned ethnic Serbs living in Croatia and Bosnia. Were they entitled to self-determination? The Committee responded that they were, yet strictly in the sense of autonomy and recognition as minorities within sovereign countries and that both Croatia and Bosnia had to "afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognised in international law, including, where appropriate, the right to choose their nationality."⁵³⁴ As we will see in the next chapter, Croatian authorities would deform the opinion, on the right to choose nationality, to justify the denial of citizenship status and rights to the Serbian minority.

With its second opinion, the Commission ruled out, implicitly, a possible right of secession for smaller groups, including for instance Kosovo Albanians. Self-determination was to be understood only for the main constitutive groups of Yugoslavia. Indeed, the third question demanded whether the internal boundaries between Serbia and Croatia, and Serbia and Bosnia were to be considered frontiers protected by international law. The Committee established

⁵³² Ramcharan, *Official Papers / The International Conference of the Former Yugoslavia Vol.1 and 2*.

⁵³³ Pellet, "The Opinions of the Badinter Arbitration Committee," 178.

⁵³⁴ Opinion 2, Pellet, "The Opinions of the Badinter Arbitration Committee."

that it recognised, following the principle of *uti possidetis juris*, the borders between Croatia, Bosnia and Serbia. In this sense, the Commission formally acknowledged that independent statehood was possible only for the former constituent Yugoslav Republics.⁵³⁵

Opinions 4 to 7 were addressed in December by the EC via Lord Carrington. Each asked, respectively, whether Bosnia and Herzegovina, Croatia, Macedonia and Slovenia were ready for international recognition.⁵³⁶ The Committee answered in January, recommending that only Slovenia should be recognised (opinion 7). Bosnia had not yet held a referendum on independence and for this reason could not be internationally recognised. Only later was it recognised, following a referendum on 7th April 1992.⁵³⁷ At the start of 1992 the Committee assumed that only states in which the choice of self-determination was based on popular consent could be independent - even though, several countries had recognised the international borders of Bosnia two months earlier. Procedurally, however, free elections defined the means to assess the will of the people. This had in fact been explicitly established in the Paris Charter: “democratic government is based on the will of the people, expressed regularly through free and fair elections.”⁵³⁸

Croatia was the object of opinion 5. The Committee recommended waiting before recognising the country, as measures for protection of minorities required by the EC had not been integrated yet within domestic legislation.⁵³⁹ Only a year earlier the Paris Charter had in fact asserted the need to protect and respect the equality of “ethnic, cultural, linguistic and religious national minorities.”⁵⁴⁰ While, this standard had been set in Paris with reference to the Soviet Union, its relevance for Yugoslavia became soon evident. As a response to this opinion, Tudjman immediately wrote to Robert Badinter, at the head of the Commission, guaranteeing that such prerequisites would be included. This, however, did not happen. Whereas in its preamble the Constitution recognised certain minorities, these were largely denied political rights and thus access to the body politic.⁵⁴¹ After all, Germany had already

⁵³⁵ 180-181 *ibid.*

⁵³⁶ Rich, “Recognition of States,” 48–49.

⁵³⁷ Caplan, *Europe and the Recognition of New States in Yugoslavia*, 38.

⁵³⁸ Section of the Charter on Human rights, Democracy and Rule of Law:

http://www.internationaldemocracywatch.org/attachments/342_Paris%20summit%201990%20-%20Charter%20of%20Paris%20for%20a%20New%20Europe.pdf

⁵³⁹ Caplan, *Europe and the Recognition of New States in Yugoslavia*, 40.

⁵⁴⁰ Section of the Charter on Human Dimension: <http://www.osce.org/mc/39516?download=true>

⁵⁴¹ I discuss in detail the exclusion of ethnic groups in Croatia in the next chapter.

recognised both Croatia and Slovenia as sovereign states three weeks before the Committee issued opinions 5 and 7 (on Slovenia). How then could the opinion of the Commission be a compelling enough reason for change? Despite the strong opposition of both France and the UK, the EC recognised Croatia as a sovereign state on 15th January 1992.⁵⁴²

Opinion 6, dealt with Macedonia. Even though the will of the Macedonian people had been determined via referendum, because of the strong Greek opposition, the Committee recommended waiting for international recognition. Opinions 8 and 9 further entrenched all these decisions, recognising the process of dissolution of the SFRY and advising that problems of state succession should be solved through mutual agreements between the successor states. Finally, opinion 10 stated that Serbia and Montenegro, together constituted as FRY from December 1991, could not be recognised as the legal continuum of SFRY, as Milosevic claimed. For this reason, the EC Committee argued, the FRY had to apply for both international recognition and membership within international organisations, as the other successor states had done. Bosnia, Croatia and Slovenia became indeed members of the UN on 22nd May 1992. The FRY instead did not apply. In this way, Milosevic could persist in claiming that the new state was in continuity with Tito's Yugoslavia, while further entrenching his policy of "serbianisation" in the Balkans.⁵⁴³

Untangling international contradictions at the start of the 1990s

The international approach in the former Yugoslavia is often described as a departure from the past. Certainly, that an international conference should be set up just a few months after the declarations of independence of Croatia and Slovenia, while these were still allegedly "domestic" matters, came in 1991 with surprise. This though, I suggest, was more the result of a contrast with what had been, from 1945 and then more strongly from 1960, a "pluralist" approach to international order, than a radical departure from the past. After all, both after 1919 and throughout the 1950s until 1960, self-determination had been used to regulate post-imperial statehood and membership in international society. Each time, in a different way, international society had explicitly delineated this standard, along with its correlative expectations as to what legitimate domestic order ought to be. Similarly to previous 20th century waves of expansion of the sovereign order, in 1991 international society sought to

⁵⁴² Caplan, *Europe and the Recognition of New States in Yugoslavia*, 120.

⁵⁴³ Rae, *State Identities and the Homogenisation of Peoples*, 2002, 172.

delineate the contours of self-determination. However, international society's newly rediscovered will to regulate from the outside the units of political communities was characterised by several inconsistencies. These became apparent as long as the work of the Conference for Yugoslavia continued.

Most visibly, a sharp divide separated on the one side domestic claims of self-determination in the name of ethnicity, and on the other, international society's liberal understanding of it. That ethnic claims of self-determination had re-emerged, at the heart of Europe, while European international society endorsed liberalism, democracy and human rights, was hardly tolerable. In 1960, the norm of self-determination had been embedded in the human rights framework. How, only three decades later, could these two very different understandings coexist? The tension was best embedded in president Tudjman's words when, in 1991, he claimed:

"(...) In their endorsement of human rights, democratic countries, including the entire United Nations are not sufficiently prepared for the present historical wave of creating national states. They have not found a satisfactory answer to the question of how to ensure the realisation of every nation's natural right to self-determination"⁵⁴⁴

The state of affairs, when the Conference started, was that both Slovenia and Croatia had already declared independence, although the borders of the new states had not yet been defined. In 1960, when granting independence to colonial territories along former imperial borders, self-determination was established internationally as a territorial, and not a cultural right – as had been the case after World War I. To seek to regulate territorial matters rather than cultural claims, was, in 1991, tempting. Approaching the question through the lens of territory rather than that of culture, it was thought at the conference, might in fact maintain international society's post-war commitment to self-determination as an ethnically blind principle. The question was dealt with in EC Committee opinions 1 and 2. The units were promptly regulated through the application of the principle of *uti possidetis*. Similarly to the colonial context, it was thought, this might keep the process more orderly.⁵⁴⁵ Opinion 3 was the first to confirm the relevance of the principle beyond decolonisation.

⁵⁴⁴ Address Delivered by the President of the Republic of Croatia Franjo Tudjman to the Croatian Assembly, May 30, 1991

quoted in Fabry, *Recognizing States*, 191.

⁵⁴⁵ Ratner, "Drawing a Better Line," 614. Though rather than "orderly" Ratner refers to "avoiding anarchy."

In applying the colonial principle of *uti possidetis* to the Balkans, the Peace Conference on Yugoslavia recognised domestic borders internal to the Federation as the new international frontiers. The major problem with the principle, as it was applied to Yugoslavia, was that it confirmed, although inadvertently, the influence of local ethno-national discourses within the new states. More recently, Cornelia Navari has brought it to light that Robert Badinter himself felt uncertain in applying the principle, prompting the International Court of Justice (ICJ) to immediately give a constitutional justification for the decision.⁵⁴⁶ The justification stated that the international decision was anyway in continuity with SFRY's law (art.5 of the 1974 Constitution.)⁵⁴⁷ Perhaps because of the pressure under which international society found itself, the Conference acknowledged the possible coincidence between the boundaries of the new states and those of the "nations."

International society insisted on stressing - especially *a posteriori* - that the allocation of self-determination was limited to the dissolution of Yugoslavia; that by no means would the *Badinter principle of self-determination* constitute a precedent. This has led to the development of the argument, throughout the 1990s, that self-determination was in fact only a "remedial right," used if no other solution could be found.⁵⁴⁸ The reason for that, it has been argued, lay in the use of the Badinter opinions as "legal justification for its recognition policy in Yugoslavia."⁵⁴⁹ In practice however, the matter was less clear. Already in 1991, it was "upon the advice of the Arbitration Commission" that the EC grounded its conditions for the recognition of the successor states to the Soviet Union.⁵⁵⁰ In the case of the Soviet Union though, the application of *uti possidetis* proved to be less problematic, with the exception of the Baltic Republics, and at least until the recent resurgence of self-determination claims in Ukraine and Crimea, as the process was uncontested by the central authorities.⁵⁵¹

Debates emerged again in 1992, as five jurists called upon the National Assembly of Québec, "to consider the territorial status of the province in the event of its separation from

⁵⁴⁶ Navari, "Territoriality, Self-Determination and Crimea after Badinter," 1303.

⁵⁴⁷ The establishment of a continuity with Yugoslav law has been the object of heavy criticisms. See in particular Radan, "Post-Secession International Borders."

⁵⁴⁸ The point was made in particular by normative political theorists. *Inter alia*: Buchanan, *Justice, Legitimacy, and Self-Determination*; Pavković and Radan, "In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order"; Moore, *National Self-Determination and Secession*.

⁵⁴⁹ Caspersen and Stansfield, *Unrecognized States in the International System*, 49.

⁵⁵⁰ Rich, "Recognition of States," 42.

⁵⁵¹ Caplan, *Europe and the Recognition of New States in Yugoslavia*, 64.

Canada,”⁵⁵² following the Badinter opinions.⁵⁵³ After lengthy discussions and the organisation of a referendum in 1995, the demand was ultimately dismissed, as international lawyer James Crawford concluded in his 1997 Opinion to the Canadian government that *uti possidetis* was a decolonisation principle and did not apply to Québec.⁵⁵⁴ In so doing, he confirmed that the application of the principle was exceptional to the case of the Yugoslav dissolution. The matter, perhaps, was finally solved. Two years later however, debates started again, following the adoption of Security Council resolution 1244, establishing the United Nations Interim Administration Mission in Kosovo (UNMIK). From 1999 until 2008, when Kosovo declared unilaterally independence, neither scholars nor practitioners could agree as to whether a Yugoslav entity (rather than republic) could secede. In its 2010 advisory opinion, the ICJ concluded that this act did not violate international law, or the 1999 international supervisory framework.⁵⁵⁵ While many argued about the illegality of such act, others believed that the Badinter Opinions served as a precedent.⁵⁵⁶ As underlined by James Summers, in its advisory opinion to the Declaration of Independence, the ICJ, however, did not clarify the matter.⁵⁵⁷ The recent resurgence of claims to self-determination in the Crimea has fostered discussion again, as to whether the Badinter opinions constitute, or not, a legal precedent.⁵⁵⁸

Going back to 1991 however, except from Bosnia, where no constituent people existed administratively, in the cases of Croatia, Slovenia, Macedonia and Serbia and Montenegro (together as FRY), the application of the principle was straightforward. *Uti possidetis* confirmed the advantage of an ethnically exclusive understanding of the domestic political community, over ideas of blind equality and inclusion. From the start of the 1990s, newly proclaimed leaders found in this international recognition the justification to constitute exclusive political communities. They could inaugurate hierarchical membership, in

⁵⁵² Navari, “Territoriality, Self-Determination and Crimea after Badinter,” 1304.

⁵⁵³ Thomas M. Franck, Rosalyn Higgins, Alain Pellet, Malcolm, N. Shaw and Christian Tomuschat, ‘The territorial integrity of Quebec in the event of the attainment of sovereignty’, in Quebec, Assemblée Nationale, Exposés et études, 1992, vol. 1, pp. 377–461

⁵⁵⁴ “State Practice and International Law in Relation to Unilateral Secession: Report to Government of Canada Concerning Unilateral Secession of Quebec,” February 1997.

⁵⁵⁵ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403

⁵⁵⁶ As a Belgian delegate argued at a meeting of the Security Council in February 2008, Kosovo’s self determination should be understood exclusively as a solution within the context of dissolution of Yugoslavia and following the formation of its successor states. S/PV.5839.

⁵⁵⁷ Summers, *Kosovo, a Precedent?*, 301.

⁵⁵⁸ See on the matter Navari, “Territoriality, Self-Determination and Crimea after Badinter.”

continuity with Yugoslav rules and norms and in the name of an internationally recognised principle of self-determination.

In 1991, the international argument used to justify the allocation of *uti possidetis* was, as said, that for a state to be recognised, in conformity with the Paris Peace Charter, the will of its people should be first expressed through a plebiscite or elections. The Charter stated indeed that a “democratic government is based on the will of the people, expressed regularly through free and fair elections.”⁵⁵⁹ Accordingly, the EC Committee established that only those republics where referenda for independence had taken place could be recognised as sovereign.⁵⁶⁰ As such, Yugoslav constituent republics seeking for independent statehood had the *responsibility*, set by international society, to conform to this standard. Differently from 1919 and 1960, holding referenda was a responsibility that international society explicitly imposed for the realisation of self-determination. While in 1960 plebiscitary choice was also a means of assessing “the genuine will of people,” the decision to recognise a right to self-determination was made largely upon UN investigation.⁵⁶¹ In 1991, the expression of the “will of people” through the exercise of political rights was explicitly set as the precondition for international recognition.⁵⁶²

How referenda would be undertaken domestically, namely, who could vote and who could not, was not a matter of concern for the EC Committee. Bosnia, for example, had to wait several months before the Committee declared that it was *ready* for statehood. Even though the Committee had acknowledged its international borders by recognising those of Croatia and Serbia, independent statehood was only confirmed following the March 1992 plebiscite. That Bosnian Serbs would boycott *en masse* the referendum was well known to international society, following the numerous warnings given by local authorities.⁵⁶³ Both the EC and US claimed that the organisation of a democratic referendum (followed by international recognition), might avoid the spread of violence. What was at the start of 1992 international society’s “exit strategy”⁵⁶⁴ from a direct involvement in Bosnia’s domestic order, it is well

⁵⁵⁹ Section on Human Rights, Democracy, and the Rule of Law.

⁵⁶⁰ Weller, “The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia,” 593.

⁵⁶¹ Bhuta, “New Modes and Orders,” 810.

⁵⁶² Fabry, *Recognizing States*, 189–190.

⁵⁶³ Ibid. 198–199

⁵⁶⁴ Bhuta, “Democratisation, State-Building and Politics as Technology,” 10.

known, failed.⁵⁶⁵ It was evident that international society's approach to state recognition was flawed. In each republic, not only in Bosnia, several minority groups had boycotted the referenda on independence. Moreover, in 1991, hierarchical membership was already in several former republics a common practice. Beyond attempts to physically stop citizens from exercising their right to vote, whole sections of citizenries of former republics were suddenly excluded from their body politic through the enactment, in the name of self-determination, of ethnically exclusive citizenship laws.

In addition to that, as I have shown through the analysis of the opinions, not all the republics were simultaneously recognised, even though they had held elections and referenda. While the Badinter Committee claimed in December 1991 that Slovenia should be recognised (EC and UN official recognition followed a year later in January and May 1992), Macedonia's recognition was postponed until 1993. The reason for Macedonia's deferment lay in Greece's refusal to recognise, for historical reasons, the boundaries of the new state. Nevertheless, this further blurred international practice of self-determination. As constituent republics enjoyed different treatments, some claims were granted more visibility – and perhaps more legitimacy – than others.

It did not take long for the EC Conference to realise its contradictions. As said, Robert Badinter himself was preoccupied by the application of the opinions that he had contributed to drafting. However, it became soon clear that the first two normative components attached to self-determination, people and rights, had already been largely defined, in exclusive terms, by local claimants. Paradoxically, through its opinions, the EC Committee further entrenched them. Perhaps as a result of the realisation of such inconsistencies, more insistence was in turn attached to the third dimension, namely to the correlative responsibilities that states should uphold, to be deemed legitimate members of post-1990 international society, once self-determination was to be realised.

State responsibilities and legitimate behaviour

Sovereign responsibilities, which historically had been attached to the realisation of self-determination, became again, as in 1919, explicitly tied to its recognition. The Conference

⁵⁶⁵ Fabry, *Recognizing States*.

thus initiated a *leitmotiv* that would shape international society's involvement in the Balkans for the following decade. These responsibilities represented in fact a clear externally dictated condition for membership in international society. As in 1919, sovereign equality of new states was made conditional upon the acceptance (more than actual compliance) with criteria internationally imposed. These, I shall argue, touched unequivocally on the delineation of what good domestic order ought to be within the new states, in conformity with international society's ideological commitment to democracy and human rights. In 1960, resolution 1514 declared that "by virtue of" the right of self-determination, people can "freely determine their political status and freely pursue their economic, social and cultural development." Yet, neither that resolution nor article 25 of the Covenant on Civil and Political Rights did explicitly "distinguish among such political systems as liberal democracy, democratic socialism, corporatism or communism."¹ In 1990, democracy was established as the system of legitimate political authority for the new states.

In December 1991, a group of EC foreign ministers presented before the Peace Conference a set of conditions that needed to be met if post-Yugoslav Republics sought international recognition.⁵⁶⁶ In addition to being constituted on a democratic basis, the guidelines presented a list of other prerequisites. Newly elected political élites should give the guarantee that they would comply with the provisions of the UN Charter, of the 1975 Helsinki Final Act, that they would respect the inviolability of international borders and, in particular, that they would comply with the 1990 Paris Charter.⁵⁶⁷

Agreeing upon the propositions enacted in the Paris Peace Charter signified, at least in principle, the acceptance by new states of "democracy as the only system of government of our nations." It also implied that the guarantee that human rights and the equality and rights of minorities would be respected. The Charter also mentioned the respect of the rule of law and the promotion of a market economy. The document thus was an open "attempt to make the quality of a state a precondition for its participation in European international society."⁵⁶⁸ In this way, international society would directly monitor the rightful membership of individual states,⁵⁶⁹ and decide whether it conformed or not with international expectations attached to

⁵⁶⁶ Navari, "Territoriality, Self-Determination and Crimea after Badinter," 1301.

⁵⁶⁷ Ibid.

⁵⁶⁸ Flynn and Farrell, "Piecing Together the Democratic Peace," 533.

⁵⁶⁹ Clark, *International Legitimacy and World Society*, 155.

the realisation of self-determination. The Paris Charter made clear in fact that “domestic political arrangements” were explicitly linked to states’ international legitimacy.⁵⁷⁰ Whereas the Charter expressed the endorsement of liberal norms and rules in the explicit language of each state’s responsibility,⁵⁷¹ by stating that the CSCE “[would] ensure that everyone [would] enjoy recourse to effective remedies, national or international, against any violation of his rights,” it implied that beyond states’ own responsibilities, an enforcing mechanism of supervision would be set in place. In 1990, though, how this would happen was not clear.

The Paris Charter of 1990 did not constitute a legally binding document. However, if the post-Yugoslav states wished to be recognised, and further be deemed as equal members of international society (by the CSCE, EC, UN) they had to give the guarantee that they would enforce these responsibilities. In its resolution 713, the Security Council reiterated in explicit terms the idea that responsibilities were attached to sovereignty. Resolution 713 enacted on 25th September 1991 was the first to deal with the breakup of Yugoslavia, invoking chapter VII of the Charter and thereby transforming the Yugoslav crisis into an international matter at the UN. The resolution set an arms embargo for SFRY/FRY, pushed towards the respect of a ceasefire and to a peaceful settlement of the Yugoslav dissolution. Importantly for my argument, it indicated that, “(...) the Secretary-General observes that (...) the concept of state sovereignty has taken on a new meaning, not only rights but also responsibilities.” Whether the meaning was new, I believe that I have shown through the previous chapters, was not really the case. Responsibilities were attached to the realisation of self-determination in 1919, and before that to the 19th century standards of civilised membership in the family of nations.⁵⁷² At the start of the 1990s, though, these responsibilities were explicitly articulated and further entrenched in the language of “sovereignty as responsibility.”⁵⁷³

Hence, to be deemed legitimate members of international society, newly “self-determined” states would have to accept a certain number of responsibilities. As implied in the Paris Charter, new states would further be deemed accountable for them, both domestically and internationally. At the start of the 1990s, post-Yugoslav states thus had to give the guarantee that they would comply with a set of international norms such as democracy, human rights,

⁵⁷⁰ Ibid., 55.

⁵⁷¹ The Charter refers to responsibilities attached to human rights, respect of minorities, elections, endorsement of a free market and respect of a rule of law.

⁵⁷² For a detailed discussion on the matter see Glanville, *Sovereignty and the Responsibility to Protect*, 2014.

⁵⁷³ Deng uttered the explicit phrase in 1996. Deng, *Sovereignty as Responsibility*.

the rule of law, liberal economy, and with the specific criteria delineated by the EC Committee. Post-Yugoslav states formally included, in their national jurisdictions, references to “human rights,” or “equality.” In practice however, they did not conform to internationally defined expectations. For Tudjman or Milosevic this did not really matter at the start of the 1990s. Only later would international society remind them that the moral and political categorising of post-Yugoslav states as less democratic / liberal depended on the fact that international expectations attached to the realisation of self-determination had not been met.

Indeed, the standards that were set between 1990, with the endorsement of the Paris Charter, and the latest opinion of the EC Commission in 1993, were later to be often referred to in international society’s involvement in the area. As we are about to see in the next chapter, throughout the 1990s, they would be recurrently invoked (along with other increasingly *ad hoc* criteria) as benchmarks to which post-Yugoslav states had to conform, if hoping to be deemed legitimate members (or, as in the case of Kosovo, simply members) of international society. In a way not dissimilar to 1919, as we will see in the next chapter, these standards would function as political and legal markers upon which judgements on the stage of advancement of the new states would be articulated.

Conclusion

With the dissolution of Yugoslavia at the start of the 1990s, claims of self-determination in the name of an ethnic norm emerged again internationally. That this should be happening right after the endorsement of the Paris Charter, and at the heart of Europe, came internationally as a great surprise. In the Balkans, as I have shown in this chapter, these claims were largely in continuity with Yugoslav norms and rules. Ethnicity and self-determination had in fact been two central dimensions of the Yugoslav membership regime. At the start of the 1990s, these were thus available tools for newly elected political elites to claim an ethnically connoted right of self-determination. Such claims were, however, in obvious contrast with what had become, after World War II, an ethnically-blind norm of self-determination, as well as with Europe’s commitment to democracy and human rights.

As a reaction to these events, international society established a peace conference and a special arbitration committee to deal specifically with the matter of self-determination in the Balkans. This, I have argued in this chapter, indicated international society’s newly

rediscovered willingness to delineate, as in 1919 and 1960, the boundaries of self-determination and ensuing international expectations. As it became accepted that self-determination was to be, again, the principle at the base of a new wave of state formation, the standard of legitimate statehood and membership in international society was redefined. The work of the EC Committee therefore attests to the international attempt to grant meaning, not without contradictions, to self-determination's normative components, in accordance with international and European standards of legitimacy. However, in some sense, local claimants had already defined the first two dimensions: people and rights. In turn, international society stressed that if new states sought international recognition, they had to guarantee that they would conform to internationally delineated responsibilities. However, I have shown, they did so on contradictory grounds. In 1990-1992 this mattered less than did keeping the process of dissolution as orderly, or perhaps as little confused, as possible. After all, through its response international society had delineated, once more, its expectations attached to the realisation of self-determination.

Peoples, Rights and Responsibilities in the Former Yugoslavia

As I have shown in the previous chapter, with the start of the dissolution of the Yugoslav Federation, international society came to delineate, again, the contours of self-determination and the international expectations that attached to its realisation. As in 1919 and 1960, self-determination was used as the standard for, if not post-imperial, at least post-federal, membership in international society. The EC Committee thus redefined the meaning of self-determination's components - people, rights and responsibilities. However, international society's newly rediscovered will to regulate from the outside the units of political communities contained several shortcomings. Importantly for us, through its opinions the EC Committee recognised certain ethnic claims over others, while concurrently arguing that democracy, equality and human rights were to be the basis of self-determination for the new states. While this contradiction was clear, it was less of a matter of immediate concern. After all, the Committee had made international recognition of the post-Yugoslav states conditional upon their guarantee that a clearly defined set of responsibilities, correlative to the right of self-determination, would be respected. For states to be deemed legitimate, they now had to uphold those guarantees.

As the war progressed and as international public opinion kept referring to the *mistakes* of the Badinter Committee, contradictions became increasingly evident.⁵⁷⁴ In several post-Yugoslav states, practices of hierarchical membership were established to redefine national political communities, and used as rationales for exclusion and mass killings. In an alleged continuity with Yugoslav politics of recognition, these were also justified in the name of international principles of state-making. Practices of hierarchical membership were in contrast with international conceptions of equality and human rights that, despite obvious flaws, were embedded in the idea of self-determination.

As national authorities pursued, each in its own way, their respective state-building activities, international involvement in the area became increasingly *ad hoc*. For each specific context, international expectations as defined in 1990-1992 came to be coupled with more detailed

⁵⁷⁴ From legally grounded arguments such as Radan, "Post-Secession International Borders"; to rather morally enhanced explanations as Lucarelli, *Europe and the Breakup of Yugoslavia*.

UN, OSCE, EC/EU and other international standards and monitoring tools. These, I argue, largely took the form of enhanced conditions to which new states had to conform, in the name of a state responsibility (domestic and international) previously outlined in the *opinions* and the EC guidelines for state recognition.

To systematise my claim, I propose to look at the cases of Croatia, Bosnia and Kosovo. From the start, hierarchical membership was a legal feature of Croatia's membership regime. Largely unquestioned for a whole decade, it was only later that Croatia's initial practices of self-determination were internationally disputed. As it sought to become a member of the EU, Croatia was required to adapt its domestic practices to European expectations about appropriate behaviour and identity. In Bosnia, in turn, although hierarchical membership was a feature of war politics, ending violence was the first international priority. In 1995, the Dayton Agreement seemed to foster discriminatory practices at the very moment when the UN set up an international supervisory regime to monitor and judge Bosnia's compliance with international norms. Kosovo, *in fine*, represents somehow a different case. Whereas it was not part of the 1991 EC arrangements, from 1999 a similar disciplining regime to the one established in Bosnia was set up. The settlement of Kosovo's status (and sovereignty) was made conditional upon the enforcement of international norms. Concurrently, however, Kosovo's international supervisory regime seems to have fostered a hierarchical recognition of membership and rights. Following the 2008 Declaration of independence, domestic hierarchies have been called into question by, for example, the OSCE, to claim that Kosovo is still not yet a "democratic" polity.

The Case of Croatia: Self-Determination, a Domestic Matter?

In May 1991, the population of Croatia was asked to express itself in a referendum as to whether they wanted the "Republic of Croatia as a sovereign and independent state that guarantees the Serbs and members of other nationalities in Croatia cultural autonomy and all rights of a citizen (...)." Although the wording of the referendum question suggested that Serbs and other ethnic minorities would be equally treated, the Croatian Constitution enacted a year earlier defined Croatia as primarily the state of ethnic Croats. While ethnic Serbs living in Croatia and representing, according to the 1991 census, 12.2 % of the total population boycotted the referendum, 94.7% of the participants voted in favour of independence. The

outcome of the referendum was no surprise. From 1990, following the victory of Franjo Tudjman's conservative Hrvatska Demokratska Stranka ("Croatian Democratic Party" - HDZ) at the "first free elections,"⁵⁷⁵ Tudjman's newly founded opposition party had in fact started a pro-independence campaign marked by a nationalist tone.⁵⁷⁶

The HDZ mobilised local media to promote ideas about a mythicised unity and common decent. From the start of his campaign in 1990 and throughout his years in power until his death (1999), Tudjman conveyed discourses about an uninterrupted history of Croatian statehood started in the 10th century. These discourses were institutionalised in the 1990 Constitution, which, it should be said, was not amended until 2010.⁵⁷⁷ Nationalist narratives were supported by the endorsement of "Croatian" symbols, the same ones used by Pavelic in 1943 when he set up the NDH. For instance, he named the new national currency "kuna," the same unit of exchange used in fascist Croatia. He also adopted, slightly changing it, the red and white chequered flag, the traditional Ustasa emblem.⁵⁷⁸

While these events were taking place within what were still the borders of Yugoslavia, Croatia's along with Slovenia's claims to self-determination were increasingly the object of international attention. Croatia declared its independence from Yugoslavia on 25th June 1991. This declaration was soon after followed, as we have seen in the previous chapter, by an international three-month moratorium asking Croatia (and Slovenia) to freeze state-building activities. A day after the moratorium expired, Croatia enacted its national citizenship law, on 8th October 1991. The process of national self-determination initiated with the plebiscite for independence was confirmed, as Croatia's body politic was redefined in exclusive terms. A few months later, the Badinter Committee recognised in its third opinion Croatia's republican borders as international frontiers. In so doing international society inadvertently acknowledged the ethnic component of Croatian claims to self-determination. Both ethnicity and independence though had already been mentioned in the 1990 new Constitution of the Socialist Republic of Croatia. This, I believe, substantiates the point made in the previous chapter. When the Badinter Committee gave its opinions, local claimants had already defined

⁵⁷⁵ Wording of the Constitution of 1990.

⁵⁷⁶ Pavkovic, *The Fragmentation of Yugoslavia*, 127.

⁵⁷⁷ Following the Committee on the Constitution, Standing Orders and Political System of the Croatian Parliament. *Narodne Novine* no. 76/2010

⁵⁷⁸ For an account of the consolidation of Croatia's nationalist identity see Bellamy, *The Formation of Croatian National Identity a Centuries-Old Dream*, Chapters 2–4.

to an important extent the first two components of self-determination (people and rights) that the Badinter Committee then confirmed. Following the Preamble of the 1990 Croatian Constitution:

Considering the presented historical facts [reference made to the historical continuity of Croatia since the 10th century] and universally accepted principles of the modern world, as well as the inalienable and indivisible, non-transferable and non-exhaustible right of the Croatian nation to self-determination and state sovereignty, including its fully maintained right to secession and association, as basic provisions for peace and stability of the international order, the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are citizens, and who are guaranteed equality with citizens of Croatian nationality and the realization of national rights (...)
Respecting the will of the Croatian nation and all citizens, resolutely expressed in the free elections, the Republic of Croatia is hereby founded and shall develop as a sovereign and democratic state in which equality, freedoms and human rights are guaranteed and ensured, and their economic and cultural progress and social welfare promoted.⁵⁷⁹

Hayden has qualified the 1990 Croatian constitution as the clearest example of “constitutional nationalism.”⁵⁸⁰ He claims that the legal definition of Croatia and its right to self-determination in exclusive terms allowed for the administrative “omission” of other citizens from the national political community.⁵⁸¹ In the first article of the 1974 Constitution of the Socialist Republic, Croatia was indeed defined “as a national state of the Croatian people, state of the Serbian people in Croatia and state of nationalities living on its territory.” The first article of the 1990 Constitution instead instituted “the Republic of Croatia as the national state of the Croatian people and the state of members of other nations and minorities who are its citizens.” While the preamble of the Constitution defined as national minorities Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians, according to the first minority law enacted in 1992 only those minorities representing more than 8% of the total population had the right to vote.

Without the right to vote, individuals that according to the 1991 census did not fall into a large minority were *a priori* excluded from the Croatian body politic. In the 1991 census, however, only ethnic Serbs represented more than 8% of the total population.⁵⁸² This law was later abolished in 1995 but until 1999, namely until Tudjman’s death, no law on the matter

⁵⁷⁹ Constitution of the Republic of Croatia, *Narodne Novine*, 56/90.

⁵⁸⁰ Hayden, “Constitutional Nationalism in the Formerly Yugoslav Republics,” 5.

⁵⁸¹ Ibid.

⁵⁸² Ragazzi, “When Governments Say Diaspora Transnational Practices of Citizenship, Nationalism and Sovereignty in Croatia and Former Yugoslavia,” 282–283.

existed. In practice, minorities were excluded from full participation in the national political community for almost a decade in accordance with the 1991 Yugoslav census.

The matter for those who did not identify with Croatian ethnicity was further complicated by citizenship requirements. Whereas the first criterion in seeking citizenship was the possession of the previous socialist Croatian citizenship, the second was (and actually still is) Croatian ethnicity.⁵⁸³ Concerning *ius sanguinis* criteria, the number of generations has never been legally specified; therefore in the 1991 context of consolidation of an exclusive corporate state identity, anyone able to “demonstrate” Croatian ethnicity could be granted citizenship. No specific criteria existed as to the means of such demonstration. Often, even parents’ or grandparents’ baptism certificates were sufficient. While this clause related to individuals of ethnic origin living abroad, co-ethnics within the territory of Croatia automatically became citizens of the new state when independence was proclaimed.⁵⁸⁴

Those who did not identify with Croatian ethnicity, however, and who until 1991 had been citizens of socialist Croatia, without even moving, were from one day to the next turned into aliens. They were asked by Croatian authorities to apply for the new citizenship from the start, needing to prove that they had lived in Croatia at least for the previous five years. For some, this was an easy matter. For those who had migrated to Croatia during the Yugoslav regime however, things were further complicated. When individuals migrated from one republic to the other, as said, often the required changes in citizenship status were not undertaken, precisely because migrations were internal to the Yugoslav state.⁵⁸⁵ What seemed to be a simple oversight in the SFRY had therefore direct consequences in the definition of the new national constituency.⁵⁸⁶

Practices of hierarchical membership in Croatia

As international attention was increasingly directed to the widespread violence in Bosnia, Tudjman kept invoking non-interference, and Croatia’s natural right to self-determination to

⁵⁸³ specifically art. 5, 6 and 30 para.2; and art. 11 and 16 related to the acquisition of Croatian citizenship for co-ethnics residing outside the territory of the state.

⁵⁸⁴ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 279–284.

⁵⁸⁵ Ibid., 278.

⁵⁸⁶ For a detailed study of the modes of acquisition and loss of Croatian citizenship see Ragazzi and Stiks, “Country Report: Croatia.”

justify his project of state-building. It was in this context, I suggest, that national officials inaugurated practices of hierarchical membership in a *legal fiction* of continuity with the previous Yugoslav politics of recognition. Invoking the past membership regime was instrumental to legitimising national claims and the setting up of hierarchies among population groups. While the literature largely presents Croatia's state-building project as one of homogenisation, clear hierarchies in the allocation of status (who can be self-determined?) and rights (how is self-determination exercised?) existed. It appears then that in the 1990s Croatian state, various categories can be identified, in relation to the rights granted or denied to them. In looking at the practices through which Croatia drew the boundaries of its political community, I have identified three categories of included/excluded individuals.

The first category was – and still is - constituted of ethnic Croats *totally included*. Two cases specifically entered into this category: ethnic Croats living on the territory of the newly proclaimed independent state, and the diaspora. The definition of Croatia's self-determination in ethnic terms directly translated into the inclusion in the body politic of those ethnic "Croats" living abroad. Individuals belonging to the broadly defined diaspora were given the possibility to acquire a double, Croatian, citizenship and the right to vote at Croatian elections, even while remaining in their country of residence or origin. Official numbers on naturalisations of co-ethnics abroad are, however, not publicly available, the Croatian Ministry of Interior considering it a confidential matter. To be granted citizenship, for the diaspora, what mattered at the start of the 1990s was being able to loosely demonstrate one's ethnicity (art.11 of the citizenship law). Conversely, individuals associated to other ethnic groups living in Croatia had endorsed Croatian culture and customs.

With regard to the diaspora, two separate typologies were, and actually still are, considered in the citizenship law: first, the diaspora living in the far abroad; second, and more ambiguously, the diaspora living in the near abroad, namely in other SSFY. This second group has specifically benefitted from facilitated naturalisation procedures and is mainly embodied by Croats from Herzegovina.⁵⁸⁷ When the citizenship law was enacted in 1991, both Tudjman and Milosevic had projects of territorial expansion. Tudjman's project of "Great Croatia" specifically, included the whole of the territory of Herzegovina.⁵⁸⁸ As Bosnian statehood was

⁵⁸⁷ article 18 of the Citizenship Law,

⁵⁸⁸ Ragazzi, "When Governments Say Diaspora Transnational Practices of Citizenship, Nationalism and Sovereignty in Croatia and Former Yugoslavia.," 163.

internationally recognised, Croats from Bosnia principally living in Herzegovina were granted, as an alternative to territorial annexation, Croatian citizenship.⁵⁸⁹ After all, following Yugoslav politics of recognition they were “as” ethnically Croats as ethnic Croats in Croatia.

Minorities recognised during Socialist Yugoslavia, as well as other “nationalities” of Yugoslavia – exclusive of Serbs - constituted the second category, that is, the *non-ethnic partially included*. These were, following the 1990 Constitution: Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians. Interestingly, while in 1919 only four minorities had been recognised internationally, the then available census of 1910 recognised exactly these same nine groups.⁵⁹⁰ Whereas individuals associated to minorities had a legal citizenship status, as said, for a whole decade, they were simply denied political rights.

The third category, the *internal excluded*, was constituted by ethnic Serbs. Reference to Serbs of Croatia almost inevitably brings to mind the events of the 1995 military operation Storm, led by the Croatian Army. The primary objective of this operation had been the re-appropriation of the Serbian “occupied” region of Krajina. During this operation between 200 000 and 250 000 Serbs, former citizens of the Croatian Socialist Republic, were either killed or forced to leave Croatia to find refuge in one of the neighbouring states - principally Bosnia and Serbia.⁵⁹¹ Since 1995 national media, history books and state officials have come to describe operation Storm as the homeland’s war of liberation from Serbs.⁵⁹² However, these views obscure the fact that these were the very same individuals who were citizens of the Croatian Republic, until the dissolution. In 1991, they were simply denied the status of Croatian citizenship and were asked to formally reapply to become members of the new independent state of Croatia.

⁵⁸⁹ For a detailed study on the matter see Ragazzi, “When Governments Say Diaspora Transnational Practices of Citizenship, Nationalism and Sovereignty in Croatia and Former Yugoslavia.”

⁵⁹⁰ Nine groups were present for the area, following the last Austro-Hungarian census of 1910. R1700, LNA

⁵⁹¹ These are the numbers published in “Sustainability of Minority Return in Croatia”, UNHCR publications, 2007. Yet the total number of refugees varies according to sources. Following operation Storm, two Security Council resolutions dealt with the issue of Serbian refugees as problematic for Croatia as a whole (1009 and 1023, adopted in the second half of 1995.) After these, with the exception of resolution 1037 dealing though with the region of Eastern Slavonia, no resolution dealt again with the return or reintegration of Serbs in Croatia.

⁵⁹² Interestingly, during my visit at the Zagreb “National Archives on the Homeland War” in 2012, I was exclusively provided with secondary sources suggesting that the war was one of national liberation from Serbs oppressors.

Individuals associated during the years of Socialist Yugoslavia to nations without a “homeland” embodied the fourth group of discriminated people, falling into the category of *internal excluded*. This was the case of Roma people and Vlachs who, differently from other recognised minorities in Croatia, did not have a kin-state to which they could refer. During the 1990s they were less visibly discriminated than Serbs. Yet, this was so for the simple reason that, in continuity with Yugoslav politics of recognition, these groups were not visible in any public debate. Domestically, they were excluded from the national project of Croat self-determination. Internationally, the concern with regard to Croatia was directed towards the treatment of ethnic Serbs. It was only at the end of the 1990s that discrimination against Roma people became an issue of international debate. Namely, when the OSCE and the EU politicised the matter and made of minority protection one of the explicit criteria for EU membership.

Croatia’s Politics of Self-Determination and EU Conditional Membership

Practices of hierarchical membership were initiated in Croatia before the EC Committee’s disciplining role, though in some sense, Tudjman found in the opinions of the Committee a legitimising ground. The uneven allocation of rights to population groups was in fact justified in the name of Croatia’s right to self-determination. Be it because of the violence in Bosnia, or perhaps a sense of continuity with international society’s commitment to liberal pluralism in the early 1990s, for a whole decade, Croatia’s discriminatory practices were internationally tolerated.

With Tudjman’s death in 1999, Croatia started to show its will to join the European Union. It soon became clear that if Croatia wanted to become a member of the EU, it was required to adapt domestically to regional integration. The EU asked Croatia to take several legal and normative provisions and to conform to EU liberal standards on rule of law, human rights, democracy and the liberal market.⁵⁹³ These standards related primarily to the endorsement, by Croatia, of the EU *acquis* requirements. As set in Article 49 of the Treaty on European Union “any European State which respects the principles set out in Article 6 (1)” (Art. 49), that is,

⁵⁹³ Behr, “The European Union in the Legacies of Imperial Rule?,” 254.

“the principles of liberty, democracy, respect of human rights and fundamental freedoms, and the rule of law” (Art. 6/1) may apply to become a member of the EU.⁵⁹⁴

Croatia was also asked to respect “specific conditions related to stability - namely, respect for existing peace treaties and cooperation with the International Criminal Tribunal for the Former Yugoslavia - and to regional cooperation.”⁵⁹⁵ Croatia was the object of an “enhanced conditionality,”⁵⁹⁶ as the EU made clear that it would “maintain a stricter observation of the progress made in satisfying the conditions [posed].”⁵⁹⁷ EU Politics literature largely presents “EU conditionality” as the most efficient tool of “democratisation” and “domestic change,” as it requires legal adaptation to EU standards.⁵⁹⁸ Other scholars have put in evidence instead the significant analogies between EU conditionality and the 19th century standard of civilisation.⁵⁹⁹ For instance, Yannis Stivachtis has made the point very clearly in his piece (and title) “Civilisation and International Society: the Case of European Union Expansion.”⁶⁰⁰ Stivachtis makes the analogy between 19th century and EU accession practices, stressing the “civilisation dimension embedded in membership conditionality.”⁶⁰¹ Hartmut Behr has made a similar point. In the 19th century “standards of civilisation decided which non-European nations were eligible to interact with European nations, and if a nation was perceived as eligible (or civilised), the method of interaction;” similarly, he claims these dimensions are embedded in EU accession policies.⁶⁰²

In light of these interpretations, we can also locate the “enhanced conditionality” measures for Croatia in the EU civilisational project. In other words, the EU might have set stronger conditions and expectations for what it assumes are less liberal, or perhaps less *civilised*, practices. Following the endorsement of the Pact of Stability with South-Eastern Europe in 1999, the EU did after all directly call into question the Croatian politics of self-determination

⁵⁹⁴ The text of the Treaty of European Union is available online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF>

⁵⁹⁵ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 305.

⁵⁹⁶ Kostovicova and Bojicic-Dzelilovic, “Europeanizing the Balkans,” 225.

⁵⁹⁷ Stiks, “A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States,” 2009, 305.

⁵⁹⁸ See as cases in point Graziano and Vink, *Europeanization*; Trauner, *The Europeanisation of the Western Balkans*; Radaelli, “Europeanisation.”

⁵⁹⁹ Behr, “The European Union in the Legacies of Imperial Rule?”; Nicolaidis et al., “From Metropolis to Microcosmos”; Stivachtis, “Civilization and International Society.”

⁶⁰⁰ Stivachtis, “Civilization and International Society.”

⁶⁰¹ Ibid., 71.

⁶⁰² Behr, “The European Union in the Legacies of Imperial Rule?,” 239.

as undertaken in 1990. It repeatedly asked Croatian authorities to change its citizenship law and comply with other EU guidelines on human rights and minority rights.⁶⁰³ In other words, for nine years (the longest process of accession in the history of the EU), the EU asked Croatia to redefine its domestic order and political community as defined in the early 1990s, in order to reach European standards and gain EU membership.

Viewed in these terms, the post-Cold War European context becomes a specific normative environment, promoting liberal ideas about membership and rights. An interpretivist approach suggests that this normative environment is generative in two ways. First, it creates the possibility for an international (or European) judgment in relation to the organisation of domestic orders and to the treatment of internal societies. This has translated, for instance, into the EU's expressed demand for Croatia to adapt its minorities and citizenship provisions. Second, as the EU has become a liberal zone of practice and identities, it also fosters standards of rightful state conduct and membership within it.

Concerning specifically the definition of the boundaries of national citizenship (both as a status and as a set of rights), a clearly identifiable European model does not exist. The EU claims to be promoting a sort of archetypal conception of liberal citizenship defined in terms of equality of membership, and inclusiveness of right. However, how the assessment is made, as to when an aspirational candidate conforms to such expectations, is not fully clear. To be sure, the respect of human and citizenship rights, democracy and minority rights have constituted the "conditionality package" to which Croatia had to conform, if hoping to become a member of the European society of states.

Croatia joined the EU in 2013, though while it has integrated in its legislation provisions on minority rights and non-discrimination, it has not changed its exclusive citizenship law. Certainly, reasons for that can be attributed to the fact that, after all, the establishment of a citizenship law falls under the competence of national governments and that, in this sense, the EU cannot deal with the matter. Nevertheless, the same day that Croatia celebrated its accession, EU representatives made it clear that although Croatia had become a member of European international society, Brussels was still concerned about its domestic practices and

⁶⁰³ Stiks, "A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and Its Successor States.," 2009, 312.

guarantees of equality.⁶⁰⁴ It might be too early to tell but it is not implausible to interpret this and ensuing EU reminders as a somewhat ambiguous rhetoric of differentiation. A rhetoric that underlines that even after accession, the status of Croatia is perhaps not as equal, after all, as other members of the European family of nations.

The Case of Bosnia: War, Ethnicity, and the Responsible State

Like Croatia, Bosnia was recognised internationally following a referendum on independence. Already at the end of 1991, in its third opinion, the Badinter Committee had acknowledged as international the borders between Bosnia, Croatia and Serbia. However, as said earlier, the recognition of Bosnia as a sovereign state had been delayed following opinion 4, until the organisation of a referendum. The referendum was held between 29th February and 1st March 1992. Shortly after, on 6th April 1992, the EC and US together recognised Bosnia as sovereign and independent. On 22nd May, Bosnia was admitted to the UN. Yet, the events that surrounded the referendum, declaration and recognition of independence led Bosnia simultaneously to the start of a much more violent war than in the other successor states. As put by Martti Koskenniemi, the war in Bosnia has brought in fact to international attention that nationalism in Yugoslavia, has been an “onion problem.” Who represents the minority and who the majority is in fact simply a matter of location and perspective.⁶⁰⁵

War and the crystallisation of difference

In 1991, several recognised ethnic groups co-existed in Bosnia, in wider a variation of proportion, when compared to the other successor states of the former Yugoslavia. According to the 1991 census, the four principal groups were Muslims (Bosniaks) who constituted 43.47% of the total population, Serbs 31.21%, Croats 17.38%, and Yugoslavs (namely, those who from 1971 endorsed their ethno-national origin as Yugoslav) 5.54%.⁶⁰⁶ As we have seen, however, differing from the other ethnic majorities in the rest of the Yugoslav republics, Muslims were never recognised as a constituent people, with Bosnia as their kin republic. Instead, ethnic Croats and Serbs in Bosnia found themselves in 1991 with each, respectively, a kin state. In addition, both Milosevic and Tudjman included important parts of the Bosnian

⁶⁰⁴ <http://www.bbc.com/news/world-europe-23118035>

⁶⁰⁵ Koskenniemi, “National Self-Determination Today,” 260.

⁶⁰⁶ Official Results, *Zavod za statistiku Bosne I Hercegovine* – Bilten no.243, Sarajevo, 1991.

territory in their respective expansionist project. Hence, in March 1991, Milosevic and Tudjman met in Tito's old hunting lodge of Karadjordjevo, to talk about a potential partition of Bosnia between the two.⁶⁰⁷ No agreement was found. Less than a year later, the inviolability of the borders of Bosnia was acknowledged through the Badinter opinions. Alija Izetbegovic, who had won at the last federal elections, became the internationally recognised leader of the new country, along with his SDA party ("Party of Democratic Action"), membership of which was based on identifying as a Muslim.

The issue of the independence of Bosnia was therefore different than for the other constituent republics of Yugoslavia. In the other successor states the coincidence between the nation and the state was "easily" solved by the newly proclaimed national élites: each republic entitled to self-determination had a respective constituent people defined in ethnic terms. In Bosnia, though, three groups claimed the same territory. In this context the first citizenship law of Bosnia was enacted, in 1992. As the war progressed, however, questions of citizenship allocation and rights became irrelevant.

According to the 1991 census, undertaken before the start of the war and the changes in the ethnic composition of the population, Croat populations were concentrated in Herzegovina, Muslims principally inhabited the areas surrounding Bihac, Sarajevo and the East of the country. Serbs instead were spread throughout the remainder of the territory. With the organisation of collective displacements and killings following ethnic lines during the war, the demographic structure of the country changed radically. For example, the proportion of Muslims that inhabited Hercegovina decreased and so did those of Croats and Muslims living in Republika Srpska. However, the exact shifts in demographics are not yet known. After years of discussions a census was finally organised in 2013. The results, however, have not yet been released. Additionally complicating the picture, though they were never recognised, during the war two self-proclaimed republics coexisted, in the Serb and Croat inhabited areas respectively: Republika Srpska (RS) and the Croatian Republic of Herceg-Bosna.

Republika Srpska was created in a movement of opposition to the claims of self-determination taking place in Bosnia. In October 1991, Serbian deputies principally belonging to Milosevic's Serb Democratic Party opposed the "sovereignty memorandum" for

⁶⁰⁷ Pavkovic, *The Fragmentation of Yugoslavia*, 126.

independence, presented at the Bosnian parliament. A few months later, they persuaded the Serbian population of Bosnia to boycott the referendum on independence. At the end of October 1991, Serb parliamentarians formed the Assembly of the Serb People in Bosnia-Herzegovina, ending the tripartite association at the parliament that had been set up a year earlier by the political representatives of each ethnic group. This tripartite understanding had been established following the release of the 1991 population census, so as to proportionally represent within national institutions each ethnic group. In January 1992, the constitution of the Republic of the Serb people of Bosnia was released. In April, namely a day after the international recognition of Bosnia, Republika Srpska declared its independence and its union with Yugoslavia, in support of Milosevic.

In the name of Republika Srpska's somehow (mis)interpreted self-determination, a month later Radovan Karadzic announced, before the newly formed Bosnian Serb Assembly, the political programme of the republic, in six strategic points. All the points touched upon the drawing of the territorial borders of the newly proclaimed republic. The first point specifically concerned the need to quickly establish the borders that would divide Serbs from the two other main ethnic communities.⁶⁰⁸ Karadzic also proclaimed the formation of a republic army, with, as its Chief of Staff, General Ratko Mladic. Karadzic suggested that Republika Srpska's territory would also include the areas in which Serbs had been allegedly, during World War II, a majority and had become a minority during the partisans' "persecutions." The accomplishment of RS' self-determination was understood in terms of the constitution of an ethnically pure entity. To change the ethnic balance of the area, every means was used: from massive displacements and village fires to rapes and killings. According to a written document submitted in 2004 to the ECOSOC, following the war 135 386 individuals of Croatian ethnicity and 434 144 Muslims were missing from the territory of RS.⁶⁰⁹ In parallel, the Serb population was increased via the introduction during the war of ethnic Serbs from other areas of Bosnia as well as, from August 1995, from Croatian Krajina.

⁶⁰⁸ The details of the events leading to the creation of RS and the start of the war can be found in the ICTY's 1995 amended indictment against Mladic: <http://www.icty.org/x/cases/mladic/ind/en/mla-ai021010e.pdf> (2-3).

⁶⁰⁹ <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/116959be7b8cf279c1256e5a003b5e6b?Opendocument> the document is available online. The borders of RS taken into considerations were the ones fixed through the Dayton Agreement. Because of the absence of a population census numbers are not known exactly. In addition, the numbers of returns also vary every year.

While, during the war, most of the international and media attention was directed to the RS, both because of the violence of the ethnic Serb expansionist project and the general stigmatisation of Milosevic, a parallel state to Croatia was set up. This was the Croatian Republic of Herceg-Bosna. Proclaimed in April 1992, it was deemed illegal internationally a few months later, though it continued to exist informally until 1995 and was recognised by Croatia.⁶¹⁰ Similarly to political leaders of the RS, those of the self-proclaimed republic undertook persecutions and deportations of Muslims and non-Croat populations. The purpose was the creation of an ethnically pure, Croatian, area within Bosnia.⁶¹¹ In addition to gross violations of human rights, a whole regime of hierarchical allocation of rights and privileges also existed for ethnic Croats, coinciding, as discussed in the previous section on Croatia, with Tudjman's project of Croatian self-determination.

To make sense of Tudjman's expansionist visions in Bosnia, Francesco Ragazzi has spoken about a "*de facto* annexation of Herceg-Bosna" during the war years. Hence, through the Croatian citizenship law enacted at the end of 1991, between 500,000 and 800,000 citizens of Bosnia, ethnically Croats, were naturalised, becoming also citizens of Croatia and thereby acquiring the right to vote.⁶¹² These individuals voted in mass for Tudjman's party, the HDZ, which promised them several privileges. During the war, the HDZ-BIH was principally a channel of communication and exchange between Zagreb and the local politicians. Following Ragazzi, during the war this happened importantly through the informal financing of the separatist Croat army, the Croatian Defence Council. In addition, during and after the war, and perhaps even until the death of Tudjman, the HDZ continued to fund banks, schools and social institutions exclusively for ethnic Croats in the Hercegovina area.⁶¹³

Throughout the war, both UN and EC representatives proposed several peace plans, to settle the territorial aspirations of the three principal ethnic groups. Already in February 1992, at what had then become the International Conference for Yugoslavia, Lord Carrington and José Cutileiro proposed a system of ethnic power-sharing, paralleled by a territorial

⁶¹⁰ Ragazzi, "When Governments Say Diaspora Transnational Practices of Citizenship, Nationalism and Sovereignty in Croatia and Former Yugoslavia.," Chapter VII on the annexation of Herceg-Bosna.

⁶¹¹ The ICTY has opened a case to prosecute its military and political leaders on these grounds http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf for details on the events

⁶¹² The newspaper *Vjesnik* published the only existing estimation in 2006, mentioning thus the numbers are not official. For a state with a total of 4.3 million inhabitants, those numbers remain quite significant.

⁶¹³ Ragazzi, "When Governments Say Diaspora Transnational Practices of Citizenship, Nationalism and Sovereignty in Croatia and Former Yugoslavia.," 316–320.

decentralisation following ethnic lines. The plan was immediately rejected by the Bosnian Muslims, who sought for a larger share of territory, proportional to the size of its population. During the war three other peace plans were proposed. In January 1993 the Vance-Owen plan for a centralised state was presented, though Bosnian Serbs rejected it, as their territorial expansion had already, importantly, progressed. In August 1993 another plan in which Bosnian Serbs would get 52% of the territory was presented. Bosniaks, to whom only 30% of the territory would be granted, rejected it. The last attempt before Dayton came from the Contact Group, an informal association of powerful countries including the UK, the US, France, Italy, Germany and Russia, formed specifically to find a solution to the Bosnian war. Between February and October 1994 the Group presented several proposals. However, they were all rejected by Bosnian Serbs. Meantime, despite the deployment of both UNPROFOR and IFOR (NATO) forces, violence was not decreasing, in particular on the Serbian side. In July 1995, the media made public the images of the massacre in the UN protected area of Srebrenica, for which Radovan Karadzic and Ratko Mladic were internationally indicted.⁶¹⁴ The NATO military campaign, Operation Deliberate Force, was thus organised, to end violence in Republika Srpska and to lead the actors locally involved to peace talks.

The Dayton peace talks officially started on 1st November 1995 and lasted until 21st November. In his memoirs, the architect of Dayton and US assistant secretary of state for European and Eurasian affairs, Richard Holbrooke, wrote that the *conditio sine qua non* for the success of the talks was that only Milosevic (in contact with Radovan Karadzic and Ratko Mladic, both indicted by the ICTY), Tudjman and Izetbegovic, accompanied by their delegations were permitted to attend the conference. They were asked to remain in Dayton until an arrangement was found, without talking to the press and without the need of an agreement from home parliaments.⁶¹⁵ The two major goals were to transform the 60 days pre-talks ceasefire into a stable peace plan, and to settle the multi-ethnic question. In twenty days, under a great deal of pressure and disagreement among the delegations, as well as among the international peacemakers, an accord was finally found.⁶¹⁶

⁶¹⁴ As of today (December 2014), both Karadzic and Mladic are still on trial at the ICTY. Karadzic: http://www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf; Mladic: http://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en.pdf

⁶¹⁵ Holbrooke, *To End a War*, 200.

⁶¹⁶ Ibid., Part III (Dayton) In his memoirs, Holbrooke recalls his experience in Dayton as an American diplomat day per day, highlighting the difficulties and tensions on each side.

After Dayton

The Dayton Agreement partitioned Bosnia into two parts, Republika Srpska with 49% of the territory and the federation of Bosnia and Hercegovina with 51%, combining both Muslim and Croat populations. Because of its contested nature, it left aside the district of Brcko, a neutral self-governing district in the North of Bosnia. Problematically, the Dayton Agreement maintained for the Serbian populated areas the name Republika Srpska. First, this implied the existence of a “special” entity within Bosnia, carrying the name of Republic within a sovereign state - the other entity being called the Federation of Bosnia and Hercegovina. It has since inevitably continued to evoke the Bosnian Serb attempt to homogenise a whole part of Bosnia. Dayton also established the new Constitution of Bosnia (annex IV) still in force today, as well as the citizenship law in effect until 1999 (Citizenship Act, in annex IV).

The Agreement contains many inconsistencies with regard to membership and citizenship rights. Most importantly for us, Bosnia’s political community was inaugurated on very contradictory grounds. Following the Dayton Constitution for Bosnia, the allegedly new domestic liberal regime would conceive human rights of individuals as inalienable and described them as never secondary to those of national groups. In the citizenship act however, made up of a set of power-sharing agreements, ethnic groups had political supremacy over individuals.⁶¹⁷ This remained the case later, when in 1999, the National Citizenship Law replaced Dayton’s Citizenship Act. Interestingly, it was the Office of High Representative (OHR) in Bosnia that, with local representatives, elaborated the content of this law. The drafting of a citizenship law constituted, in line with other internationally defined conditions, an explicit requirement “to ensure that Bosnia and Herzegovina evolves into a peaceful and viable democracy on course for integration in Euro-Atlantic institutions.”⁶¹⁸

Moreover, the Constitution of Bosnia as established in Dayton makes a clear distinction between the constituent peoples and other citizens of Bosnia. Those who do not belong to one of the three groups, or who do not want to show a preference for an ethnic group “are disenfranchised from electing their group representatives in the country’s political

⁶¹⁷ Sarajlić, “The Bosnian Triangle: Ethnicity, Politics and Citizenship,” 1.

⁶¹⁸ Official statement of the OHR, introduction. 2007 (updated in 2012): http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38519

institutions.”⁶¹⁹ In other words, in a country where since 1995 membership has been primarily defined in ethnic terms, constitutionally, only the three major ethnic groups in the country share power in state institutions.⁶²⁰ The voting system itself therefore “prevents individuals from transcending ethnic boundaries and electing members of other ethnic groups as their representatives.”⁶²¹ Consequently, groups not acknowledged in the constitution have been denied full access to the Bosnian political community. The document does also refer to “equality” and non-discrimination – though not in relation to the allocation of rights.

From 1995, the idea that individuals’ interests could only be upheld or represented by someone of the same ethnicity has crystallised, in some sense, some of the war discriminatory categories. The point has been made already that post-Dayton Bosnia displays, in fact, in particular at the level of each entity, a hierarchical rights regime grounded in older categories of politics of recognition.⁶²² These practices have been facilitated both nationally and at the local level, as, in compliance with the Dayton Agreement, group-differentiated rights have been married to territorial ones.

Following the territorial partition within the country, the Dayton Agreement established the existence of two citizenships in Bosnia: national, and entity. Each entity has thus its own citizenship law and is in charge of the birth, residence and naturalisation records. Entity citizenship laws provide that all citizens of Bosnia who resided on the territory of one of the two entities from 6th April 1992, namely from the start of the war, are to be considered citizens of that entity. The right to vote was – and still is - allocated according to the entity of residence.⁶²³ Legally, it is possible to change entity citizenship. In practice however, the matter has proven far more complicated. In line with the Dayton Agreement, each entity constitution has special provisions, which define them since 1995 as exclusive dominions of their ethnic majorities.

⁶¹⁹ Sarajlić, “Conceptualising Citizenship Regime(s) in Post-Dayton Bosnia and Herzegovina,” 24.

⁶²⁰ Pupavac, “Multiculturalism and Its Discontents in SFR Yugoslavia and Bosnia,” 12. In her article Pupavac describes in detail the limits of what she claims is liberal multiculturalism in Bosnia.

⁶²¹ Sarajlić, “Conceptualising Citizenship Regime(s) in Post-Dayton Bosnia and Herzegovina,” 24.

⁶²² Pupavac, “Multiculturalism and Its Discontents in SFR Yugoslavia and Bosnia,” 7; Sarajlić, “Conceptualising Citizenship Regime(s) in Post-Dayton Bosnia and Herzegovina”; Sarajlić, “The Bosnian Triangle: Ethnicity, Politics and Citizenship.”

⁶²³ Sarajlić, “The Bosnian Triangle: Ethnicity, Politics and Citizenship,” 15.

Indeed, in post-Dayton Bosnia, several overlapping (and hierarchical) membership regimes existed: first, the national one that differentiated both the three constituent groups and other minorities; second, the entity regimes, each with their own hierarchies locally developed. Third, within the FBiH itself, a further differentiation has existed between Muslims and Croats, visible for example in Mostar, a town divided between these two constituent ethnic groups.⁶²⁴ The Dayton agreement has legalised what were pre-existing membership categories in Yugoslavia, but in so doing, it has also recognised, hierarchically, certain claims over others. Not only has Dayton made of ethnic groups the primary locus of identity. Difference has also been institutionalised, allowing for the development of local hierarchies in rights allocation according to the group of origin. To be sure, the Dayton Framework Agreement for Peace was meant to be a temporary solution negotiated in just twenty days, to be modified during Bosnia's politics of state formation. However, as of today, the Bosnian Constitution as set up in its Annex 4 has never been modified. Equality of rights, political equality and human rights are claimed, whereas rights and membership follow obvious hierarchical lines.

The realisation of self-determination and sovereignty as responsibility

In order to enforce the Framework Agreement, the Dayton conference set up the Office of High Representative (OHR). As set in the Agreement, since 1995, the OHR has been in charge of “monitoring the implementation of the peace settlement,” to “maintain close contact with the parties to the Agreement and promote their full compliance,” “coordinate the activities of the civilian organisations” (...), “giving general guidance,” “facilitate, as the high representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation.”⁶²⁵ Accordingly the OHR has been in charge of monitoring the enforcement of what is, as we have seen, a complex and contradictory framework for membership in Bosnia. Despite its hierarchical component, the OHR has, at the same time, fostered a political discourse about political equality, equality of rights, non-discrimination and human rights. That this egalitarian narrative sits uncomfortably with an externally defined hierarchical regime, seems to not really matter. This contradiction (*and others*) is best crystallised in the 1998 Madrid Declaration of the OHR's Peace Implementation Council:

⁶²⁴ See on the matter Vettors, “The Power of Administrative Categories.”

⁶²⁵ Article II, Annex 10 of the Dayton Agreement.

“BiH must become a modern democratic country, where all citizens are equal before the law, destined to be an integral member of the European family. It must also be a country in which historical, cultural and linguistic and religious traditions are valued and respected where diversity is a source of strength not division.”⁶²⁶

References to Bosnia’s “genuine” enforcement of liberal democracy, and to “true” security in the name of non-discrimination have been recurrent, both by the OHR and the OSCE Mission in Bosnia. As both international missions have repeatedly stated, Bosnia “must” (*using the same language as the OHR*) show that it is able to become accountable towards its own citizens. This, it is claimed, can only happen through the enforcement of liberal standards of conduct. International parties, in turn, are there to “help” in delineating standards of conduct and to monitor their enforcement. For example, the OSCE Mission Programme on Equality and Non-Discrimination both “advocates for the elimination of discriminatory laws, policies and practices and technically supports the capacities of governmental institutions to meet their obligations to deliver and enforce such rights.”⁶²⁷ How this is supposed to happen, however, given the very framework of Dayton, is not fully clear.

In spite of these contradictions, international society constantly monitors, through increasingly specific and articulated mechanisms, Bosnia’s “state of advancement” towards the enforcement of liberal standards. As such, since 1995 both the OSCE’s and the OHR’s official statements have repeatedly made the point that Bosnia is not yet “able to take full responsibility for its own affairs.”⁶²⁸ In 1998, the OHR’s Peace Implementation Council stated that, “democracy is taking root in BiH, but it needs to be reinforced at every level.” What “taking root” meant and when the OHR would deem that it is fully realised, however, remained unclear. In fact, almost fifteen years later, the OHR seems to consider in its reports that despite “progress,” the Bosnian government is not yet democratic enough.⁶²⁹

⁶²⁶ http://www.ohr.int/pic/default.asp?content_id=5190

⁶²⁷ Statement of presentation of this specific programme of the Osce Mission in Bosnia:
<http://www.oscebih.org/Default.aspx?id=51&lang=EN>

⁶²⁸ Official statement of the OHR, introduction. 2007 (updated in 2012): http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38519

⁶²⁹ The various 2014 reports in fact all make the same point: “the downward trajectory the country has been on during the last eight years continued, with governing institutions and political leaders failing to advance on a broad range of reforms, including the conditions set for Bosnia and Herzegovina (BiH) to move towards Euro-Atlantic integration.” Available online: <http://www.ohr.int/other-doc/hr-reports/archive.asp?sa=on>

While the OHR claims “to give citizens real control over their own lives,”⁶³⁰ Bosnia’s *complete* realisation of self-determination - externally delineated by international norms and *ad hoc* measures - is yet to come. As put by Nehal Bhuta, “instituting [the] vision of the good constitutional order is also claimed [by international actors] to be a means of realising another fundamental principle of the contemporary international order: self-determination.”⁶³¹ This is ironic, as Bosnia has been an independent state, and member of the United Nations, since 1992.

The establishment of the international supervisory regime in Bosnia has led numerous scholars to make the analogy with colonial and trusteeship practices.⁶³² William Bain in particular has argued that the OHR, along with international missions in Kosovo and East Timor, “has seen a return to trusteeship practices,” overtaken in the Cold War years by the right of self-determination.⁶³³ He claims that “trusteeship practices” are, however, historically inherent to international society.⁶³⁴ In 1995 then, the OHR took on the task of governing the country. The OHR is “empowered to promulgate law and to remove elected officials, even those of the highest rank, who are judged to be in violation of the Peace Agreement or the terms of its implementation.”⁶³⁵ In no way, though, is the OHR accountable for the decisions it takes on local institutions and citizens.⁶³⁶ I have shown through my previous chapters that Bain’s understanding of self-determination is more a reflection of a certain historical context (the Cold War and decolonisation) than of the substance of the idea itself. Historically, self-determination has always been associated with internationally defined expectations and responsibilities, bearing direct implications on the nature of statehood. Bosnia, I hope to have shown, is thus no exception to this trend and this, I believe, should not be seen as in contradiction with Bain’s argument.

⁶³⁰ Point 12.4 of the Madrid Declaration

⁶³¹ Bhuta, “New Modes and Orders,” 804.

⁶³² See respectively Chandler, *Bosnia Faking Democracy after Dayton*; Bain, *Between Anarchy and Society*, 2003.

⁶³³ Bain, *Between Anarchy and Society*, 2003, 129.

⁶³⁴ *Ibid.*, 7-8

⁶³⁵ *Ibid.*, 146.

⁶³⁶ *Ibid.*

The Case of Kosovo: Self-Determination and Conditional Sovereignty

Let us now though go back in time and contextualise the story of Kosovo. In what was in the early 1990s Yugoslavia, a context marked by increasingly visible independence claims, Kosovo Albanians thought that they too could take advantage of this moment. Throughout the 1980s, relationships between Serbia and Kosovo, as we have seen in the previous chapter, had become increasingly tense. In September 1991, the Democratic League of Kosovo (LDK), formed in 1989 to counter Milosevic's oppressive policies and banned by Yugoslav/Serbian authorities, organised a referendum on independence. 87% of the voters chose independence. The plebiscite, massively boycotted by Serbs following Milosevic's instructions, was declared illegal by Belgrade. In October 1991, "Republika Kosova" declared its independence, and was immediately recognised by Albania. No one else, however, took Kosovo's claims seriously, as the Badinter Committee concluded that only former Socialist Republics would be recognised as having a right of self-determination. In fact, "Kosovo was the only entity that asked for an opinion to the Badinter commission but did not receive any."⁶³⁷ As indicated later by the Independent International Commission on Kosovo, international society feared that giving way to Kosovo's claim would lead to a "never-ending process of political fragmentation."⁶³⁸

In turn, while Albanian leaders claimed that Kosovo Albanians were a people with a territory and for this reason were also entitled to self-determination, Belgrade claimed that Kosovo Albanians were only a minority in the Federal Republic of Yugoslavia (FRY). Because Yugoslav membership politics were grounded on equality, Belgrade argued, they were not supposed to have any special recognition or right. The argument that Serbian authorities held was that, in continuity with previous Yugoslav practices, "however one chose to read the 1974 constitution, neither the jurisdiction of Kosovo nor the Kosovo Albanians had a right of self-determination: Kosovo was not a republic of Yugoslavia but a province of one of its republics, and the Kosovo Albanians were not a constituent nation but a nationality."⁶³⁹

As Kosovo's independence claims were discounted throughout the 1990s, violence and discrimination increased. In May 1992, Ibrahim Rugova, at the head of the Democratic

⁶³⁷ Bellamy, *Kosovo and International Society*, 36.

⁶³⁸ Independent International Commission on Kosovo, *The Kosovo Report*, 58.

⁶³⁹ Fabry, *Recognizing States*, 191–192.

League of Kosovo (LDK), won the clandestine elections and became president of the unrecognised *Republika Kosova*. From then on the LDK sought to create, by peaceful means, parallel rules and institutions to Serbian ones. Rugova favoured what Nicholas Wheeler has called a “Gandhian style politics of non violence,”⁶⁴⁰ against the will, and with the violent reaction, of Belgrade. Throughout the whole of the 1990s Rugova did not react to Milosevic’s instigations of violence, losing, in turn, the support of many Kosovars. In this context, discrimination was initiated on the Serbian side that quickly led to what Heather Rae has termed “pathological homogenisation,” namely “forced assimilation, expulsion, genocide.”⁶⁴¹ Discrimination was not perceptible within the FRY’s legal documents. Indeed, the 1990 Constitution and 1992 citizenship law did not bear any trace of “ethnification,” establishing instead a fiction of Yugoslav citizenship for all the previous residents of the Socialist Republics of Montenegro and Serbia.⁶⁴² In practice though, equality was certainly not part of Belgrade’s political agenda.⁶⁴³

First and foremost, hierarchical membership for Kosovar Albanians was embodied in the 1989 revocation by Belgrade of the status of autonomous province gained by Kosovo and Vojvodina in 1974. With the loss of its special statute, which, for ten years, guaranteed, *inter alia*, special cultural rights for Albanians, Kosovo was simply turned into a Serbian region. According to Milosevic, it was a region “at the heart of Serbia,” inhabited, nonetheless, by the Albanian minority. Uttered in the name of a pretended equality, politics of “reserbianisation” implied the cancellation of special political and cultural rights for minorities. Most visibly, schools, newspapers and radios were closed, as Serbia integrated a new school programme. Also, and related to Belgrade’s “language policies”, minorities’ political parties were deemed illegal.

As a reaction to the augmenting discriminations towards the Albanian minority and the absence of any firm reaction on the side of Rugova, the Kosovo Liberation Army (UCK) was founded in 1996. An ethnic Albanian paramilitary organisation, the UCK started its first military campaigns against Serbian militias and civilian populations right after its creation, leading to a refugee crisis on both sides. In 1998 there were already between 200,000 and

⁶⁴⁰ Wheeler, *Saving Strangers Humanitarian Intervention in International Society*, 258.

⁶⁴¹ Rae, *State Identities and the Homogenisation of Peoples*, 2002, xi.

⁶⁴² Rava, “Serbia: Elusive Citizenship in an Elusive Nation-State,” 8–9.

⁶⁴³ For a discussion of Serbia’s membership politics and delineation of political community see: Rava, “Serbia: Elusive Citizenship in an Elusive Nation-State”; Vasiljević, “Imagining and Managing the Nation.”

300,000 Internally Displaced People (IDPs) and refugees.⁶⁴⁴ Kosovar Albanians who fled abroad automatically lost their citizenship. In turn, for those Serbian refugees from other states who had fled to their kin-state, the option was given of immediate Serbian citizenship, if settling in Kosovo (or Vojvodina, inhabited by a Hungarian majority). This double procedure was facilitated by the fact that even though Serbia was formally in a federation with Montenegro, republican citizenship depended upon the Serbian Ministry of Interior, accountable only to Milosevic.

In 1998, the UCK launched an important offensive against Serbs in the Drenica Valley, followed by a violent counter reaction by Belgrade. The first step to internationalise the matter was taken in March 1998 by the Security Council through its Resolution 1160, which made of the Kosovo crisis an issue of international peace and security, entrenching it in Chapter VII of the UN Charter. However, Serbian repressions and UCK campaigns continued. Two additional resolutions were adopted: resolution 1199 in September 1998 and 1203 a month later. Both recalled the Security Council's preoccupations as to human rights violations, Serbia's territorial integrity and, increasingly, the need for a "substantially greater degree of autonomy and meaningful self-administration" for Kosovo.⁶⁴⁵ In January 1999 however, the Kosovo Verification Mission received a report stating that civilians of Albanian origin were being killed on a massive scale in Racak, under the direct orders of Milosevic's office.⁶⁴⁶

A month later, the Contact Group and NATO organised a conference, in Rambouillet, seeking to find a solution through Richard Holbrooke's mediation. After a long negotiation, in March the British, American and Albanian delegations signed the "Rambouillet Accords." Milosevic, however, refused to sign as, he argued, too much autonomy was granted to Kosovo through the recognition of special social and political rights for Albanians, under the authority of locally established institutions.⁶⁴⁷ Violence continued and, on 24th March, 1999, NATO launched Operation Allied Force.⁶⁴⁸

⁶⁴⁴ Human Rights Watch, *Federal Republic of Yugoslavia: Humanitarian Law Violations in Kosovo*, 1999. <http://www.hrw.org/reports/2000/fry/index.htm>

⁶⁴⁵ S/RES/1203

⁶⁴⁶ Bellamy, "Reconsidering Rambouillet," 35 –56.

⁶⁴⁷ Ringelheim, "Considerations of the International Reaction to the 1999 Kosovo Crisis," 534.

⁶⁴⁸ I do not need to recount here the details of the Military intervention, as many have already done so. One author that has been particularly prolix on the matter is Alex Bellamy. See: Bellamy, "Reconsidering Rambouillet"; Bellamy, *Kosovo and International Society*.

Kosovo 1999-2008

Operation Allied Force was followed by the immediate adoption of Security Council resolution 1244, establishing that the United Nations would be in charge of the International Transitional Authority (ITA) through the presence of a specific Mission, the United Nations Interim Administration Mission in Kosovo (UNMIK). The Special Representative of the Secretary-General was thereby granted special powers, similarly to the Bosnian case, though pending a final status solution for Kosovo. In June 1999, following the military operation, it was obvious that Kosovo would not go back to its status as province under Belgrade's authority. However, no international consensus existed as to its future status. While the 1999 Kosovo Report "concluded that the best available option for the future of Kosovo [was] conditional independence,"⁶⁴⁹ Serbia explicitly refused any discussion on the matter.

The UNMIK therefore chose, not unlike Bosnia, a "step-by-step approach," recommended by the Independent International Commission on Kosovo,⁶⁵⁰ in its participation in building "accountable" - *a word repeatedly used by international actors on the ground* - foundations and institutions for Kosovo. The December 2000 UNMIK Report referred explicitly to the endorsement of democracy as being conditional for "Kosovo's path to self-governance," as "increased responsibility in the arena of self-governance is linked to *mature political and civic behaviour*" (my emphasis).⁶⁵¹ Such "maturity" was described explicitly in following reports, suggesting that Kosovo's self-governing institutions ought to be "responsible" for "good governance, human rights, and equal opportunities."⁶⁵²

In 2001, the UNMIK enacted a "Constitutional Framework for Provisional Self-Government in Kosovo." Besides formally establishing local self-governing institutions, the framework did not address directly the issue of Kosovo's future status. It mentioned in its foreword that: "This is a truly historic document: It will guide the people of Kosovo toward the establishment of democratic structures, and its successful implementation will greatly assist

⁶⁴⁹ Independent International Commission on Kosovo, *The Kosovo Report*, 9.

⁶⁵⁰ The Independent International Commission on Kosovo was created by the Government of Sweden to assess the recent events and published a report known as the "Kosovo Report" in 1999.

⁶⁵¹ Paragraph 108: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2000/1196

⁶⁵² https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_Report_Kosovo_en.pdf (p.12)

the process of determining Kosovo's final status.”⁶⁵³ The inauguration of “democratic” institutions, it was argued, would have helped in the matter. Meanwhile, however, waiting was the safest option. In 2003, a set of UN established benchmarks for the “good governance” and “democratisation” of Kosovo, giving birth to what became later the “Standards Before Status” policy were, in turn, enacted.⁶⁵⁴ The possibility of a discussion on the realisation of Kosovo's (democratic, to be sure) self-determination was thus explicitly made conditional upon the endorsement of those same liberal democratic standards and values underlined in Bosnia.⁶⁵⁵

The 2001 UNMIK Constitutional Framework also explicitly reiterated ideas of both responsibility and accountability of Kosovar self-governed institutions with regard to equality and human rights.⁶⁵⁶ These thus were later summed up in the 2005 Security Council Report “Standards Before Status” for a “A Kosovo where all – regardless of ethnic background, race or religion – are free to live, work and travel without fear, hostility or danger and where there is tolerance, justice and peace for everyone.”⁶⁵⁷ In parallel, similar to Bosnia, after 1999, the OSCE mission in Kosovo also stressed Kosovo had the “responsibility” to uphold equality and respect for human rights. In particular, Kosovo had the responsibility to organise equal elections. Again, the responsibilities stressed by the OSCE evoke those attached to the realisation of self-determination in 1991 and, even more so, the responsibilities that the Bosnian government was required to fulfil. The difference was that for Kosovo, adapting to international norms and rules was the condition that needed to be fulfilled, to even initiate considerations on its future status.

In 2005, the Security Council stated that it was at last possible to start thinking about a “final” status for Kosovo. This statement was the result of the UN-commissioned report elaborated by Kai Eide, under the auspices of the Secretary General, recommending that the status process should begin.⁶⁵⁸ The decision to launch it stemmed from the observation that local

⁶⁵³ http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf

⁶⁵⁴ The document stating this policy is available online in the form of a Security Council Report: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>

⁶⁵⁵ In fact, if one compares the mission statements of the OHR and UNMIK, or of the OSCE Mission in Bosnia and the OSCE Mission in Kosovo, similarities in the language used are striking.

⁶⁵⁶ UNMIK/REG/2001/9

⁶⁵⁷ <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf>

⁶⁵⁸ S/2005/635

actors were, after all, responsible enough, even though the implementation of the standards had been uneven.⁶⁵⁹

The Kosovo Status Process was launched in 2005 and UN special envoy Martti Ahtisaari was appointed to start consultations with the involved parties, negotiate and establish a road map for Kosovo. Interestingly, from 1992 to 1994 Ahtisaari had been the president of the Bosnia Working Group of the International Conference of Yugoslavia.⁶⁶⁰ He advanced a Comprehensive Proposal for the Kosovo Status Settlement in 2007, supported by the US, the EU and by Kosovo authorities. While independence was not explicitly mentioned as such, the draft settlement was widely interpreted as suggesting independent statehood for the former autonomous province. Inter alia, the Ahtisaari plan proposed international membership within international organisations for Kosovo and the adoption of “national symbols.”⁶⁶¹ Of course, Serbia rejected the plan and later, in November 2008, when Kosovo had already unilaterally declared independence, the EU accepted the demand of Serbia, not to implement the plan through its EULEX mission, as should have otherwise happened.

However, while articles 2 and 3 of the plan clearly linked “self-governing” institutions’ responsibility to respecting equality of all communities and their rights, in line with previous statements and provisions, a hierarchical recognition of rights and groups was concurrently fostered. Similar to Bosnia, while the plan endorsed equality and human rights as grounding for the Kosovo polity, “ethnicity and groups rights were the paramount values in [the report’s] ethnicised discourse.”⁶⁶² As in Bosnia, group rights, ethnicity and territoriality thus shaped the allocation of certain rights, in particular political ones. As in Bosnia, this inadequacy facilitated the setting up of a hierarchical allocation of rights, along, inevitably, older categories of recognition. The difference was that from 1999, the UNMIK was in charge of the citizenship registers.⁶⁶³

To complicate the matter, since 2008, “despite the constitutionally and legally enshrined promise of equality, differentiated citizenship together with a political context defined by an

⁶⁵⁹ Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council S/2005/635

⁶⁶⁰ <http://www.ewi.info/profile/martti-ahtisaari>

⁶⁶¹ S/2007/168/Add.1, March 2007.

⁶⁶² Krasniqi, “The International Community’s Modus Operandi in Postwar Bosnia and Herzegovina and in Kosovo,” 539.

⁶⁶³ Krasniqi, “Citizenship as a Tool of State-Building in Kosovo: Status, Rights and Identity in the New State.”

ethnic divide and past structural inequalities contributed to the emergence of *hierarchical citizenship* where some groups are more equal than others.”⁶⁶⁴ While the creation of new hierarchies might recall Koskenniemi’s “onion problem” earlier mentioned for Bosnia, it also seems to indicate that hierarchies continue to emerge, when even apparently egalitarian or liberationist principles (from Serbian “oppressors”) like self-determination become the organising principles of domestic orders. It seems, in turn, that since Kosovo’s unilateral declaration, the OSCE Mission *in loco* has found in these new group rights hierarchies a reason to further “advise [Kosovo’s] institutions,” this time, for example, as to “how to improve and implement anti-discrimination legislation and policies.” Hence, after 2008, through its special section bearing the by now, for us, evocative name “Toleration and Non-Discrimination,” the OSCE still “helps promoting tolerance and acceptance of diversity in Kosovo,” it “teaches young people about different cultural heritage,” but it also gives “strong recommendations.”⁶⁶⁵

In what still seems to be – borrowing the expression from Bain – a “new paternalism,” the overall OSCE mandate in Kosovo is in fact, as of today, “to take the lead role in all matters relating to institution and democracy-building.” In other words, its wording has not changed since it was first established, in 1999, as a “pillar” of the UNMIK.⁶⁶⁶ The OSCE is still “regularly assessing the process of ‘democracy-building’,” as, it seems to be implied, Kosovo has not yet reached the standards “required,” to be recognised if not as a *civilised*, at least as a *tolerable* state internationally. OSCE reports (but also reports from other organisations) thus regularly indicate that despite constitutional equality, discrimination is still prevalent in Kosovo. This (once more) is ironic, as the Ahtisaari Plan itself, while proposing an uneven allocation and recognition of rights (Section II), suggested in 2007 that Kosovo could apply for membership in the society of states.

Dominik Zaum has argued that “by establishing international administrations and denying self-governance to the affected populations [*in Kosovo and Bosnia*]” international society “compromises one of the fundamental aspects of sovereignty, the norm of self-determination.”⁶⁶⁷ In IR and legal scholarship, Zaum is certainly not alone in making this

⁶⁶⁴ Krasniqi, “Equal Citizens, Uneven ‘Communities’: Differentiated and Hierarchical Citizenship in Kosovo,” 1.

⁶⁶⁵ From the mission statement of the section on Toleration and Non Discrimination:

<http://www.osce.org/kosovo/105094> - as of 1st December 2014

⁶⁶⁶ <http://www.osce.org/pc/28795> - the statement bears the date 1999

⁶⁶⁷ Zaum, *The Sovereignty Paradox*, 2007, 128.

claim. However, I have shown through this section and the previous, that the idea of self-determination is in fact central to the history of Kosovo, or even Bosnia. In the case of Kosovo, after 1999 and until 2008, international actors seem to have carefully avoided the explicit term “self-determination,” referring instead to Kosovo’s “self-government.” However, as I have shown, it appears that they have constantly negotiated its three constitutive components: peoples, rights and responsibilities. It then seems to me that rather than compromising the idea of self-determination, the recent history of Kosovo has simply confirmed, Robert Lansing’s 1921 prophecy, that “the phrase is simply loaded with dynamite.”⁶⁶⁸

Conclusion

When, in 1991-1992, the EC Commission delineated the contours of self-determination for Yugoslavia, it also redefined international expectations attached with the idea. These international expectations were in line with Europe’s ideological commitment to liberalism and human rights, and clearly outlined what good domestic order ought to be within the new states if self-determination was to be realised. In the early 1990s, these expectations came to constitute a “pre-consensus,” later reinforced, I have shown, by increasingly *ad hoc* standards and measures, on which a more, or less, vigorous judgement on the legitimacy of new states could be made. However, I have shown, expectations were revised on contradictory grounds. While both the 1991-1992 settlement (for Croatia and Bosnia) and two international supervisory regimes (for Bosnia and Kosovo) have upheld an enhanced version of political equality and equality of rights within the polity, they have also promoted the hierarchical recognition of national and ethnic groups.

This, however, does not seem to have mattered for international society’s categorising of states along lines of democratic/liberal zones of practice and identity. It seems then that over the 1990s and 2000s, while criteria of appropriate domestic behaviour have been constantly reviewed and refined, legitimate statehood and membership for the post-Yugoslav, “self-determined” states has become increasingly aspirational. This might well evoke the 1920s international order. As the League of Nations repeatedly reminded the newly formed Kingdom of Yugoslavia that its status as sovereign equal was dependent upon meeting

⁶⁶⁸ Lansing, *The Peace Negotiations*, 79.

expectations defined in the Minority Treaties, these very same treaties were constituted on contradictory grounds. In a way, the history of self-determination in the Balkans, both before World War I and from the end of the Cold War confirms Gerry Simpson's point expressed only one year after end of the war in Bosnia:

"Throughout history, the elasticity of self-determination has ensured its longevity but diminished its legitimacy. It has managed to survive inconsistent application, to absorb anomalies and, ultimately, to satisfy powerful strategic and political interests and realities without compromising its revolutionary appeal".⁶⁶⁹

⁶⁶⁹ Simpson, "The diffusion of sovereignty," 1996, 260.

Conclusion

This thesis has offered an account of the twentieth century expansion of international society in which an ambiguous and contested idea of self-determination is central. I have sought to unearth a neglected side of the politics of self-determination, in which a combination of international disciplining and local practices produces stratifications both among and within states. The main critical point that I have made is that a linear tale of progressive equality attached to the expansion of the nation-state is at odds with logics of hierarchy that accompany the history of self-determination. Invoked to dismantle imperial orders and universalise the model of the nation-state, I have shown that self-determination has also involved exclusions and hierarchies, both domestically and internationally. This has been true throughout the twentieth century, though it has taken different forms for each wave of expansion of international society: the conclusion of World War I, the wave of post-World War II decolonisation, and following the break-up of the Soviet Union and Yugoslavia.

The Argument Restated

I have argued that despite their variations, twentieth century understandings and usages of the idea of self-determination point to a recurrent tension. This is a tension between the egalitarian aspirations of self-determination, on the one hand, and the practices of hierarchy associated with self-determination, on the other. For each of the 20th century waves of expansion of international society, this tension has been evident at three different levels of world politics. First, it has been embodied in the disciplinary role of international society, when self-determination was redefined, during each wave of state formation, as the standard of legitimate membership and statehood. Second, the tension has manifested at the domestic level of the newly “self-determined” states as boundaries of national political communities were delineated. Third, and as an implication of all this, the tension is found in the ordering of states within international society. Let me survey again each of these dimensions.

First, the tension has been manifest in international redefinitions of self-determination. In becoming the accepted standard for post-imperial statehood and membership in international society, I have argued that self-determination has entailed correlative disciplining expectations. These, I have suggested, have been international expectations as to what “good”

domestic order ought to be within post-imperial states, expectations that have shaped at given times and in different ways, conceptions about legitimate statehood and membership. They have regularly revealed that the political equality of individuals and equality of rights is constitutive of the nation-state. However, they have also been at times more, at other times less, explicit and coherent, periodically fostering the recognition of certain claims over others. These expectations, I have suggested, thus compromise the dominant narrative about equality within and among states. To fully comprehend these expectations, I disaggregated the idea of self-determination into what I have identified are its three historical components: “peoples,” “rights” and “responsibilities.”

Second, I have argued that the tension has taken form at the domestic level of the new, “self-determined” states, as political élites came to draw the boundaries of national political communities. I have shown that the egalitarian ethos attached to the concept of self-determination obscures the problem that how the “people” are defined matters for how rights are to be allocated. Specifically, throughout the past century, uneven distributions of political rights persisted within many post-imperial states. “Hierarchical membership,” that is old social distinctions or hierarchies inherited from past imperial modes of recognition, have structured post-imperial societies.

International expectations about equality within new states have thus only rarely been met. I have argued in fact that domestic politics of self-determination were largely perceived internationally as a distortion, or misapplication of the principle within “self-determined” states. This contrast, I have suggested, has resulted in the re-establishment of hierarchies between “old” and post-imperial states in international society; between more civilised or less civilised states; between states that allegedly are defined by equality and inclusion and those that witness hierarchical membership in politics of self-determination. Hence, whereas international norms have become delineated increasingly in liberal terms, the practice of creating hierarchies of status has not disappeared.

Historical Cases

The bulk of the thesis then sought to demonstrate the historical basis for my claims. I have chosen to study each twentieth century wave of expansion of international society. First, for each period examined, I have looked at international redefinitions of self-determination, at the

1919 Paris Peace Conference, at the UN over the two decades following World War II, and through the Opinions of the EC Committee in 1991-1992. Then, I have looked at the role of self-determination domestically, in the Kingdom of Yugoslavia after 1919, in post-colonial Africa after 1960 with a specific focus on Nigeria, and in the Balkans after 1990, drawing international implications for each case.

Post-1919 Order

The historical investigation started with the end of World War I and the Paris Peace Conference, when self-determination became a principle of international order. In Paris, self-determination became the shared standard of post-imperial membership within international society. The Paris Peacemakers directed the principle to the territories formerly under the authority of the Austro-Hungarian and Ottoman empires, whereas territories formerly under the rule of defeated powers were put under the tutelage of the League of Nations, through the Mandate System. The allocation of self-determination and recognition of statehood was made conditional upon the signing of the Minority Treaties, outlining the contours of appropriate state conduct. More specifically, I have suggested, they delineated the defining components of self-determination: peoples, rights and responsibilities. “Peoples” were defined in ethnic terms, as the principle was directed to Central and South-Eastern Europe to those groups that had mobilised national sentiment in the 19th century. They were granted the “right” to independent statehood and recognition, but they also had to conform to a series of conditions, such as the respect of equality domestically and – though unequal - recognition of certain minority groups and their rights.

The way domestic societies came to be delineated and treated within many newly formed states, though, did not follow the Great Powers’ expectations, as established in the treaties. To illustrate my claim I examined the case of the Kingdom of Serbs, Croats and Slovenes as, only some months after international recognition of independent statehood, national authorities there inaugurated practices of hierarchical membership. These were established along old social categories inherited from imperial politics of recognition. Although, as I have stressed, these were justified in the name of international principles, hierarchical membership showed that international expectations attached to self-determination had not been met. Throughout the 1920s, I have shown, the League of Nations would constantly remind Yugoslavia and other post-imperial states that their status as sovereign equals was dependent

upon meeting international expectations about appropriate state behaviour. With their contradictions, the Minority Treaties functioned as standards of appropriate statehood and membership. That more “mature” states could interfere (though they very rarely did so) in the domestic jurisdiction of states viewed as less experienced indicates, I have contended, that hierarchies of status between new and old states were a *leitmotiv* at the League. Interestingly, these hierarchies, I have argued, in many respects followed the lines of old assumptions about international social order.

Post-1945 Order and Decolonisation

Following the end of World War II, with its inclusion in the Charter, *the right of self-determination* was formalised in international law and took on an ethnically blind connotation. However, I have argued, it was conceived more as aspirational than as an immediately and universally applicable right. In fact, I have argued that in the early years of the UN, together with the promotion of egalitarian principles such as sovereign equality and human rights, international practice was characterised by hierarchical worldviews. I then endorsed the view supported by the existing literature that throughout the 1950s, post-colonial delegates at the UN and, to a lesser extent, local colonial élites, seized the western-defined language of human rights, which they used to justify their claims to self-determination.⁶⁷⁰ Thereby, I suggested, post-colonial delegates granted new meaning to self-determination’s components. Against the will of colonial powers, self-determination was grounded on universal moral foundations, though its practical application was limited by the principle of *uti possidetis juris* to those under colonial rule. In turn, both rights and responsibilities attached to self-determination came to be embedded in the language of human rights. As a result, I have suggested, a nexus between human rights and political rights within bounded polities (necessary for the exercise of self-determination) was also formalised.

Struggles at the UN culminated in the passing in 1960 of resolution 1514 by the General Assembly. The resolution demanded the termination of colonialism and thereby the end of the whole constellation of ideas, norms and rules governing colonial empires. The Declaration on the Granting of Independence to Colonial People prompted, in the name of self-determination

⁶⁷⁰ Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001; Burke, *Decolonization and the Evolution of International Human Rights*, 2010; Reus-Smit, *Individual Rights and the Making of the International System*, 2013.

of the equality of peoples and human rights, the immediate constitution of new states in areas still under colonial rule. However, I have argued that when post-colonial states in Africa delineated the boundaries of their political communities, hierarchy largely prevailed over equality. I examined membership practices in several post-colonial states formerly under French and British rule, and argued that new states largely inherited, following the formal devolution of power, hierarchies from past imperial modes of recognition. By looking at the case of Nigeria, I showed how national élites found in ethnicity and other kinship criteria empowering justifications for the establishment of new distinctions grounded in old ideas, as claims to self-determination re-emerged domestically. With decolonisation, international supervisory regimes retreated, due to norms of sovereign equality and non-interference. However, though in a more tentative form, hierarchical worldviews were reconstituted in the arguments of numerous scholars.

Post-Cold War Order

With the break-up of Yugoslavia at the start of the 1990s, claims of self-determination in the name of ethnicity reappeared internationally. I argued that the organisation of the European Conference on Yugoslavia and the establishment of a special EC Committee attests to the international readiness to redefine the contours of self-determination and its normative components. Compared with the two other historical periods, this was undertaken through the EC Committee's legal opinions. As it became obvious that the substance of both "peoples" and "rights" had already been defined by the claimants, more attention was granted to the correlative responsibilities if statehood was to be recognised. However, I argued that these delineations bore contradictions. Coinciding with Europe's commitment to democracy and human rights through the 1990 Paris Charter, liberal norms were upheld, but international practice was characterised by the recognition of ethnic groups and thus, in turn, of some of their claims.

I have shown that in several post-Yugoslav states, practices of hierarchical membership had already been inaugurated to redefine national political communities, following old social categories of recognition inherited from Yugoslavia. These categories were used as rationales for exclusion and mass killings and were occasionally justified in the name of international recognition. As violence was spreading throughout the Balkans, international involvement in the region became increasingly *ad hoc*. International expectations as defined in 1990-1992

came to be coupled for each context with more detailed international standards and monitoring tools. These, I have demonstrated, took the form of enhanced conditions to which new states had to conform if they sought recognition as equal sovereigns (or simply sovereigns) in international society. To illustrate my claims, I examined three cases where international responses differed: Croatia, Bosnia and Kosovo.

Contributions of the Thesis

This thesis offers two sets of contributions to the discipline of International Relations: one theoretical, on the study of hierarchy and civilisation, and the other methodological, on the study of history in IR.

Theoretical Implications

First, the thesis speaks directly to the literature on the constitution of hierarchy in world politics. Over recent years, the discipline has witnessed a growing interest in this area, as authors have started to call into question the traditional assumption that anarchy is the fundamental condition of the international system. Interpretivist literature had already disputed this framework in the early 1990s, suggesting that anarchy was by no means the inevitable condition of international relations,⁶⁷¹ that instead these might well be combined in a specific way to produce a certain order,⁶⁷² and that this order might have well been hierarchical.⁶⁷³ Over the past decade, a range of alternative perspectives has developed on the matter, spanning from rationalism to constructivism, investigating both the persistence of imperial dynamics⁶⁷⁴ and the reconstitution of hierarchical logics in world politics.⁶⁷⁵ This thesis contributes to this body of literature, underlining that both logics of hierarchy and residues of empire matter as much as logics of equality in the contemporary world order.

⁶⁷¹ Wendt, “Anarchy Is What States Make of It.”

⁶⁷² Onuf, *World of Our Making*.

⁶⁷³ Clark, *The Hierarchy of States*.

⁶⁷⁴ Motyl, *Imperial Ends*, 2001; Sharman, “International Hierarchies and Contemporary Imperial Governance.”

⁶⁷⁵ Lake, *Hierarchy in International Relations*, 2009; Cooley and Spruyt, *Contracting States Sovereign Transfers in International Relations*; Donnelly, “Rethinking Political Structures”; Hobson and Sharman, “The Enduring Place of Hierarchy in World Politics”; Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002.

In this sense, this thesis resonates with arguments advanced by Edward Keene and Gerry Simpson on the “bifurcated” nature of twentieth century world order.⁶⁷⁶ Both authors argue that the contemporary order is characterised by a twofold pattern. On the one hand, they see “toleration” (in the words of Keene), or “liberal pluralism” (following Simpson), as underscoring sovereign equality and non-interference despite cultural and political differences. On the other hand, they view “civilisation” (in the words of Keene), or “liberal anti-pluralism” (in those of Simpson), as the tendency to categorise states on the basis of their internal moral and political characteristics, following international liberal norms.⁶⁷⁷ Both Keene and Simpson blur the boundaries between the domestic and international sphere. This thesis, by engaging in a historical study of both the domestic and international practice of self-determination, has advanced this intellectual agenda. As Andrew Hurrell has argued, self-determination is after all the principle that “more than any other, ties the inside and the outside, what the units are to be, who their members are, and how their boundaries are to be determined.”⁶⁷⁸

Second, the thesis speaks to the flourishing literature, to which Keene’s work is also related, on the twentieth century “civilising project.” As indicated by John Hobson, given their complementary themes, literatures on hierarchy and civilisation have in fact sometimes converged.⁶⁷⁹ Authors, in particular those from the English School, have increasingly argued that whereas decolonisation and human rights codification inflicted a *coup de grace* to explicitly hierarchical ideas about civilisation and peoples, this has not meant that their underlying structures have been entirely discarded.⁶⁸⁰ New practices and criteria have instead been attached to the post-World War II liberal “civilising project.”⁶⁸¹ These, it has been argued, are largely associated with the liberal international enterprise: from the endorsement of democratic government and the respect of human rights, to the status of women and the

⁶⁷⁶ Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002, 6, 121, 124; Simpson, *Great Powers and Outlaw States*, 2004, 312.

⁶⁷⁷ Keene, *Beyond the Anarchical Society Grotius, Colonialism and Order in World Politics*, 2002, 121–122; Simpson, *Great Powers and Outlaw States*, 2004, 77–78.

⁶⁷⁸ Hurrell, *On Global Order*, 2007, 122.

⁶⁷⁹ Inter alia, though Hobson cites several other works, see: Anghie, *Imperialism, Sovereignty and the Making of International Law*; Hobson and Sharman, “The Enduring Place of Hierarchy in World Politics”.

⁶⁸⁰ Stroikos, “Introduction” In this piece, Stroikos reviews the various works of English School scholars devoted to underscoring the new “criteria” of civilisation of the 20th and 21st century.

⁶⁸¹ Zhang, “The Standard of ‘Civilisation’ Redux,” 2014, 676.

realisation of economic and financial standards.⁶⁸² This thesis has shown that the idea of self-determination can also be related to a civilising project, though throughout the twentieth century as a whole. Whereas self-determination is largely imagined as an egalitarian and liberationist principle, I have shown that as the standard of membership in international society, it has also operated as an elusive token of civilised behaviour and identity.

Historical Implications: Recovering Meaning in History

In addition to these theoretical contributions, the thesis makes a second, methodological contribution to the study of International Relations. By understanding self-determination in terms of its three components—peoples, rights, and responsibilities—it can contribute to the further development of a constructivist approach to study history. In 2008 Christian Reus-Smit considered what it means to do “constructivist history.” He suggested that the way constructivists engage in history is distinct in IR, flowing from its foundational idea that ideational structures are “constitutive forces in history.”⁶⁸³ Constructivists, he argues, view ideas as giving “meaning to historical processes, forces that warrant, justify, and license certain forms of action.”⁶⁸⁴ Because of their interest in social, political and moral change, constructivists have favoured the comparative study of several historical moments that, they consider, represent turning points in relation to the ideas they study. For this reason they often use macro-historical methodologies.⁶⁸⁵ Favouring a focus on how political actors, rather than big thinkers, act and formulate claims, constructivists look at how their ideas reflect or defy contingent understandings of what are legitimate identities and behaviours, at given times.⁶⁸⁶

Differing from much intellectual history, constructivist history does not bound its understanding of ideas to the use of one word or phrase. Intellectual historians are interested in the impact of ideas held by thinkers within a specific historical setting and, conversely, in how these contexts contribute to the emergence of specific thoughts. Related to the purpose of

⁶⁸² See respectively: Stivachtis, “Democracy, the Highest State of ‘Civilised’ Statehood”; Donnelly, “Human Rights,” 1998; Towns, “The Status of Women as a Standard of ‘Civilization’”; Mozaffari, *Globalization and Civilizations*.

⁶⁸³ Reus-Smit, “Reading History through Constructivist Eyes,” 408.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid., 411.

⁶⁸⁶ Inter alia: Klotz, *Norms in International Relations*; Reus-Smit, “Human Rights and the Social Construction of Sovereignty,” 2001; Crawford, *Argument and Change in World Politics Ethics, Decolonization, and Humanitarian Intervention*, 2002; Rae, *State Identities and the Homogenisation of Peoples*, 2002; Bukovansky, *Legitimacy and Power Politics the American and French Revolutions in International Political Culture*, 2002.

their discipline, intellectual historians' analyses are thus largely focused on key theoretical or philosophical texts. In turn, because of their concern with intersubjective ideas held by thinkers as well as, importantly, by other social agents, constructivists understand context beyond text. Therefore, they search for ideas and seek to understand them through complexes of meanings that encompass both behavioural and discursive practices, rather than only through "tell-tale" words.⁶⁸⁷ However, as Michael Barnett has remarked, in spite of their interest in historical processes, constructivists "have been less attentive to historiographical issues than they probably should be."⁶⁸⁸

My approach to self-determination, based on the three historical components that I have identified by looking at broader international debates for each wave of state formation, fits this emerging constructivist project. In this space I want to take a step further and make the case for a concept, or tool, that might, as a consequence of my research, contribute to recovering meaning in the historical study of international relations. As a way forward, I propose thinking in terms of "immanent meanings." I understand immanent meanings as an analytical category, helpful for macro-historical research inasmuch as it allows the identification of discourses and practices reflecting key ideas of political, social and moral life in world order, at given times. Put simply, I take an immanent meaning to be one that is expressed through complex forms of arguments and conjunctions of propositions, not necessarily in single terms or phrases.

Much has been written on discourse, practices and possibly context as meaningful analytical categories in social, historical and philosophical studies. When compared to these, I suggest, the concept of "immanent meanings" is more inclusive. Inherent to it is a constant conceptual swing between on the one hand agency, via a focus on practices, and on the other hand, structures – in the case of interpretivism, ideational ones. "Immanent meanings" implies operating with an understanding of one idea, inclusive enough to identify certain behavioural and discursive practices within a meaningful span of time or area, reflective, in turn, of that given idea. This is precisely what I have sought to do in this thesis, through the identification of self-determination's normative components.

⁶⁸⁷ As cases in point of this approach see: Rae, *State Identities and the Homogenisation of Peoples*, 2002; Reus-Smit, *Individual Rights and the Making of the International System*, 2013; Glanville, *Sovereignty and the Responsibility to Protect*, 2014.

⁶⁸⁸ Barnett, "Historical Sociology and Constructivism," 101, in Hobden and Hobson *Historical Sociology and International Relations*.

Articulating the concept of “immanent meanings” is helpful to the extent that, if systematised, it can represent a valuable tool for historical enquiry, for at least two reasons. First, it sheds light on the impact of past ideas on the politics of their time. It does so by allowing us to uncover the historical presence of notions, the content of which has shifted over time, stressing change. Simultaneously though, it points to the persistence/existence of specific patterns of action and broadly defined ideas, throughout history. Second, this concept, used in constructivist history, does something that intellectual history is mostly not concerned with. It sheds light on how ideas are understood within debates and practices in contemporary world politics. Michael Mahon suggests that genealogy becomes a “diagnostic history for the present.”⁶⁸⁹ I too, advance the argument that “immanent meanings” can help us to critically conceive contemporary world politics, and think about how meaning comes to be constructed, in specific ways, over time.

In the study of IR, “immanent meanings” have a purpose for historical enquiries, such as this one, which seek to study an idea having some relevance either in modern or contemporary politics. Historians, and in particular intellectual historians, might *a priori* argue against my proposition, contending instead that ideas have their own integrity, related to the context in which they emerge and develop. The concept that I advance, though, does not seek to deny that. It represents, instead, a helpful tool with which to call into question the tendency to grant absolute meanings to specific ideas, be they upheld by thinkers or agents of public political life. If one idea is recurrent over time this does not equate with its content being unchanging. The fixing of one meaning upon a given idea is precisely what constructivist history seeks to dispute, as does this thesis. Nonetheless it is a compelling phenomenon of international life that certain ideas navigate over time, changing in their content. This is clear for concepts unambiguously at the heart of the functioning of the international system. “Immanent meanings” though can help to reveal less distinct ones through the identification of clusters of trends and their variation throughout history. They allow us to scrutinise how similar arguments can be made in different situations. They also allow us to investigate how different types of arguments can have a similar “perlocutionary power,”⁶⁹⁰ though bearing different contents according to the context in which they are developed.

⁶⁸⁹ Mahon, *Foucault's Nietzschean Genealogy Truth, Power, and the Subject*, 101.

⁶⁹⁰ See Skinner, *Visions of Politics. Volume I, Regarding Method*, 99. Skinner suggests that in his view, the work of intellectual historians should be concerned less with what certain authors may have intended by writing in a

Before concluding this thesis, I would like to address the two risks that I identify in my attempt to define the practice of searching for “immanent meanings.” I see these as critiques that historians could address to this intellectual proposition. The first is what I term the “teleology risk.” Namely, it is the danger of starting to believe that if certain arguments were made throughout history it was because they were meant to develop in a certain way in modern or contemporary politics. My answer to this is that while the search for “immanent meanings” stems from the need to think critically about modern politics, the arguments agents made or ideas people upheld are both historically and culturally bounded. In other words, thinking in terms of “immanent meanings” does not mean presupposing that the conception that was held in a different historical moment was modern or contemporary. Nor does it mean that a conception held in a non-western context is/was defined by western ideals. Thinking in terms of “immanent meanings” does not equate with the search for timeless or universal truths. Instead, because of its “relativism” it can help develop not only analytical clarity, by developing a certain subtleness in looking at ideas and practices over time, but also conceptual inclusiveness as, though changing over time, ideas and practices bear commonalities that could otherwise not be identified.

The second risk is one of anachronism, namely, granting meanings and interpretations to given arguments in the belief that they could refer to an idea proper to more recent times, or to the past. The truth is that this second risk is harder to avoid for an IR theorist. It seems sensible, however, to look for “immanent meanings” within an overarching historical span of time, made coherent by the presence of pre-existing normative structures - be they loosely or firmly rooted – that allow for the development of cognate ideas and practices. “Immanent meanings” thus explicitly refer to ideas that bear some minimal degree of intersubjectivity; otherwise they simply could not be identified within the normative context that gives them substance.

certain way (perlocutionary act) than with what authors were doing in writing certain texts (illocutionary act); Skinner grounds his distinction upon Austin, *How to Do Things with Words*, 99-102. It is my contention, however, that IR scholars who are engaged with history *do* have something to tell in regard to the “perlocutionary power” of certain acts, and that this relates to the reception and understanding in the broader sphere of social and political relations. In other words, I refer here to the “causal” role that ideas have in shaping history.

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